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राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 01 दिसम्बर, 2015 / 10 अग्रहायण, 1937

हिमाचल प्रदेश सरकार

HIMACHAL PRADESH ELECTRICITY COMMISSION SHIMLA

NOTIFICATION

Shimla, the 28th *November,* 2015

No. HPERC/414/(Security Deposit).—The Himachal Pradesh Regulatory Commission, in exercise of the powers conferred by clauses (v) and (w) of subsection (2) of section 181, read with section 47 of the Electricity Act, 2003 (36 of 2003) and all other powers enabling it in this behalf, after previous publication, hereby makes the following regulations, namely:—

REGULATIONS

1. Short title and commencement.—(1) These regulations shall be called the Himachal Pradesh Electricity Regulatory Commission (Security Deposit) (Second Amendment) Regulations, 2015.

(2) These regulations shall come into force with effect from 15th December, 2015.

2. Amendment of regulation 3.—In sub- regulation (1) of regulation 3 of said regulations, the following proviso shall be added, namely:—

"Provided that the licensee may not obtain such security in case where the supply of electricity is required for its own use."

3. Amendment of regulation 4.—The sub-regulation (4) of regulation 4 of said regulation shall be substituted, namely:—

"(4) The amount payable by the consumer towards the initial security deposit under these Regulations shall be in the form of cash/demand Draft (DD) drawn in favour of the licensee:

Provided that where the amount of initial security deposit payable at a time i.e. at the time of release of new connection or for sanction of additional load exceeds Rupees ten lacs, the consumer may opt to furnish such deposit in shape of bank guarantee and may continue to avail the facility of bank guarantee subject to provision of sub- regulation (6):

Provided further that the consumers who have already furnished the initial security deposit in shape of bank guarantee may also continue to avail the facility of bank guarantee irrespective of the amount of deposit, subject to the provision of sub- regulation (6).

(5) The amount payable by the consumer towards the additional Deposit under these Regulations shall also be in the form of cash/demand Draft (DD) drawn in favour of the licensee:

Provided that the consumers who have furnished the initial security deposit in shape of bank guarantee as per the provision under sub-regulation 4, or where the amount of additional security deposit payable by the consumer at a time exceeds Rupees ten lacs, the consumer shall have the option, subject to the provisions of sub regulation (6), to furnish such deposit in shape of bank guarantee.

(6) (a) The consumer shall get, or cause to get, at least sixty days before the expiry of the validity period, any bank guarantee(s) furnished by him as per sub-regulations (4) and (5), extended for a minimum period of next three years at a time.

(b) In case a consumer fails to renew any such bank guarantee, as referred to in clause (a) above, within the validity period, the licensee shall recover the corresponding amount from the consumer in shape of cash/demand draft and such consumer shall not be entitled to avail the facility of bank guarantee for any future security deposit for a period of three years from the date of expiry of the validity of such bank guarantee.

(7) The Security deposit furnished in shape of cash/demand draft etc. shall not be refunded for facilitating its conversion into bank guarantee at any subsequent stage".

4. Amendment of regulation 6.—For sub- regulation (1) of regulation 6 of the said regulations, the following sub-regulations (1) shall be substituted, namely:

"(1) In respect of the consumers credit–rated as poor under regulation 9, the adequacy of the amount of security deposit viz- a-viz the charges for the period equivalent to summation of the billing cycle and additional one month, shall be reviewed by the licensee generally once in every year (preferably after revision of tariff for the respective year), based on the average consumption for the period representing 12 (twelve) months from April to March of the previous year."

5. Amendment of regulation 7.— In sub-regulation (1) of regulation 7 of the said regulations, for the words and figures "Bank Rate (as on 1st April of every year)", the words "weighted average of actual Bank Rate(s) for the previous year" shall be substituted.

6. Amendment of regulation 9.—For sub-regulation (1) of regulation 9 of the said regulations, the following sub-regulation (1) shall be substituted, namely:—

"(1) Every year, the licensee shall, of its own, carryout the credit rating of its existing consumers by applying uniform criteria, which shall be hosted on its website, for such credit rating in respect of each category of consumers."

By order of the Commission
Sd/-
Secretary.

OFFICE OF THE DISTRICT MAGISTRATE, SOLAN DISTRICT, SOLAN, H.P.

CORRIGENDUM

Solan, the 9th *November,* 2015

No .MA/20-4/99-91035.—In supersession of this Office Order No. MA/20-4/99-72364 dated **20th March** 2014 that plying of all commercial / heavy good vehicles from Kotla Nala Chowk to Shilly/ Forest Road is banned w.e.f. 8.00 AM to 8.00 PM instead of 8.00 AM to 11.00 AM and 4.00 PM to 6.00 PM with immediate effect. The Incharge Traffic Police, Solan is hereby directed to monitor plying of vehicles on the above area during ban hours. The Executive Officer, M. C., Solan is also directed to fix the sinage for the information of general public etc. immediately without loss of any time.

The Ambulance, Fire brigade, Law & Order Vehicles are exempted from the Order.

By order,
Sd/-
District Magistrate,
Solan District, Solan, H.P.

OFFICE OF THE DISTRICT MAGISTRATE, SOLAN DISTRICT, SOLAN, H.P.

OFFICE ORDER

Solan, the 16th *November,* 2015

No. MA/20-4/99- 91223.—In partial modification of this Office Order No. MA/20-4/99 72364 dated 20th March 2014 and No. MA/20-4/99-91035 dated 09/11/2015 that the plying of heavy vehicles i.e. Truck, Tipper is banned from Kotla Nala Chowk to Shilly/ Forest Road is banned w.e.f. 8.00 AM to 8.00 PM and LTV vehicles remained banned *w.e.f.* 8 AM to 10 AM and 3 PM to 5 PM with immediate effect. The Incharge Traffic Police, Solan is hereby directed to monitor plying of vehicles on the above area during ban hours. The Executive Officer, M. C., Solan is also directed to fix the sinage for the information of general public etc. immediately without loss of any time.

The Ambulance, Fire brigade, Law & Order vehicles are exempted from the Order.

By order,
Sd/-
Addl. District Magistrate,
Solan District, Solan, H.P.

OFFICE OF THE DISTRICT MAGISTRATE, SOLAN DISTRICT, SOLAN, H.P.

ORDER

Solan, the 21st *November,* 2015

No. MA/20-4/99-91379.—Whereas, the Superintendent of Police Solan vide his office letter No. 38639 dated 16-11-2015 intimated to the undersigned that due to unauthorized / wrong parking of vehicles at Jaunaji Road from City Police Chowki Solan up to Private Parking at Jaunaji Road Solan on both sides of road causing a frequent traffic jams and inconvenious to the General Public and further requested to notify the above area as No Parking Zone.

Hence, after considering the above proposal I, Madan Chauhan, IAS, District Magistrate, Solan, in-exercise of the powers vested in me under section 115 & 117 of the Motor vehicle Act, do hereby order that no any kind of vehicles is allowed to park on both sides of the road from City Police Chowki, Solan up to Private Parking at Jaunaji Road, Solan and is hereby notify as No Parking Zone with immediate effect.

The Ambulance, Fire brigade, Law & Order, Police Staff and Nagar Parishad vehicles are exempted.

By order,
Sd/-
District Magistrate,
Solan District, Solan, H.P.

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 3rd November, 2015

No: Sharm (A) 6-2/2014 (Awards)-D/Shala.—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court D/Shala on the website of the Department of Labour & Employment of the Government of Himachal Pradesh.

Sr.No.	Case No:	Title of the Case	Date of Awards
1.	80/2014	Shri Puran Chand VS G.M.DIC, Mandi.	04-08-2015
2.	207/2013	Shri Babu Ram V/s D.F.O. Dehra.	07-08-2015
3.	135/2014	Shri Hans Raj V/S Dy. Dir. Horticulture.	11-08-2015
4.	255/2014	Shri Dharam Chand V/S –do-	11-08-2015
5.	253/2014	Shri Narian Singh V/s -do-	11-08-2015
6.	254/2014	Shri Suresh Kumar V/s -do-	11-08-2015
7.	252/2014	Shri Joginder Paul V/s -do-	11-08-2015
8.	251/2014	Shri Ghinder Dutt V/s -do-	11-08-2015
9.	288/2014	Smt. Raj Kumari V/s E.E. HPPWD, J/Nagar.	14-08-2015
10.	308/2014	Smt. Man Kumari V/s -do-	14-08-2015
11.	304/2014	Smt. Maina Devi V/s -do-	17-08-2015
12.	43/2015	Shri Sanjay Kumar V/s -do-	17-08-2015
13.	29/2015	Shri Jagdish Chand V/s -do-	17-08-2015
14.	42/2015	Shri Chharandu Ram V/s -do-	17-08-2015
15.	38/2015	Shri Lachhman Singh V/s -do-	17-08-2015
16.	39/2015	Shri Dinesh Kumar V/s -do-	17-08-2015
17.	328/2014	Smt. Savitri Devi V/s -do-	21-08-2015
18.	46/2014	Shri Mohinder V/s -do-	21-08-2015
19.	60/2014	Shri Vijay Kumar V/s -do-	21-08-2015
20.	37/2014	Shri Tejmal V/S -do-	21-08-2015
21.	67/2014	Shri Dharam Chand V/s -do-	21-08-2015
22.	42/2014	Shri Kishori Lal V/s -do-	21-08-2015
23.	315/2014	Shri Gian Chand V/s -do-	21-08-2015
24.	300/2014	Smt. Belu Devi V/s -do-	21-08-2015
25.	314/2014	Shri Ram Lal V/s -do-	21-08-2015
26.	281/2014	Shri Baldev Singh V/s -do-	21-08-2015
27.	296/2014	Shri Jagdish Chand V/s -do-	21-08-2015
28.	282/2014	Shri Amar Singh V/s -do-	21-08-2015
29.	389/2014	Smt. Kaushlya Devi V/s -do-	28-08-2015
30.	36/2015	Shri Jhomphy V/s -do-	28-08-2015
31.	383/2014	Smt. Nima Devi V/s -do-	28-08-2015
32.	26/2015	Shri Surender Singh V/s -do-	28-08-2015
33.	04/2014	Smt. Maheshi V/s D.F.O. Pangi.	28-08-2015
34.	120/2014	Shri Bhatto V/S D.F.O. Pangi	28-08-2015
35.	215/2014	Smt. Jamuna V/S D.F.O. Pangi	28-08-2015

By order
R.D. Dhiman
Pr.Secretary (Lab. & Emp.).

IN THE COURT OF K.K.SHARMA
PRESIDING JUDGE,

LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL,
KANGRA AT DHARAMSHALA, H.P.

Ref. No. : 80/2014
Date of Institution : 24.02.2014
Date of decision : 04.08.2015

Shri Puran Chand s/o Shri Maya Dhar, r/o Village Jhaploh, P.O. Sainj, Tehsil Chachiot, District Mandi, H.P. …*Petitioner*

Versus

The General Manager, District Industries Centre, Mandi, District Mandi, H.P.
....*Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether time to time termination of the services of Shri Puran Chand, S/O Maya Dhar, R/O Village Jhaploh, P.O. Sainj, Tehsil Chachiot, District Mandi, H.P. who was employed on daily wages at Sainj in work related to Rural Development through Diversification in Agriculture during the year 2008 and finally during June 2010 by General Manager, District Industries Centre, Mandi, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Averments made in the claim petition reveal that petitioner had been engaged in July, 2004 by the respondent on daily waged basis on muster roll without appointment order who had worked uninterruptedly under the supervision of Incharge Sericulture Centre, Pandoh upto June, 2010. It is alleged that petitioner had completed more than 240 days while working with the respondent as in the year 2005, petitioner worked for 329 days, in 2006 worked for 343 days, 353 days in 2007, 248 days in 2009 except in the year 2008 in which year he is shown to have worked for 88 days. The grievance of petitioner remains that respondent had terminated his services by giving fictional breaks in the year 2008 in the months of April & May and July to December, 2008 with the object that petitioner did not complete 240 days so as to claim the benefit of the provisions

of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act' for brevity). It is alleged that despite breaks in service as stated above, petitioner had completed more than 240 days from 2005 to 2007 and in 2009 and therefore when short breaks had been given to petitioner in 2009 with ulterior objective but petitioner claimed to be covered under the protection of Section 25-B as well as Section 25-F of the Act. Averments made in the claim petition further revealed that in April, 2009 to November, 2009, the service condition of petitioner have been unlawfully changed by respondent by providing muster roll merely for 15-20 days in a month instead of full month and in the months of February and March, 2010 the services of petitioner had been terminated by engaging and disengaging and giving him fictional breaks. Thereafter, from April, 2010 to June, 2010, service condition of petitioner had again been changed who was provided no work for the full month but only for 15-20 days. It further remained the case of petitioner that services of petitioner had been unlawfully terminated by the respondent in June, 2010 without any notice as required under Section 25-F (a) of the Industrial Disputes Act and that even one month's pay in lieu of notice by way of retrenchment compensation envisaged under Section 25-F (b) of Act had not been paid and therefore termination of petitioner is stated to be illegal, null and void ab-initio. The case of petitioner also remains that during the services period petitioner had worked as required and his work and conduct was satisfactory upto the mark who had not given to chance to his superiors for any complaint and despite that services of petitioner had been illegally terminated in June, 2010 who was not at all given any show cause notice or charge-sheet for any kind of misconduct. Not only this, while giving fictional breaks respondent did not adhere to the principle of 'Last come First go' envisaged under Section 25-G of the Act and thus fictional breaks having been given by the respondent and thereafter termination of services of petitioner fell within the ambit of unfair labour practice as provided in Schedule V Clause 10 of the Act. It is malleged that petitioner was still unemployed who had not been gainfully employed anywhere from the date of his termination and as such as claimed full back wages from June, 2010 till the date of reinstatement.

4. The respondent contested the claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches, petition being bad for suppression of material facts. On merits admitted that petitioner was engaged by respondent under project namely Diversification in Agriculture (under Sericulture component) on behalf of the Chief Executive Officer (DC) DRDA, Mandi on contract basis for a period of 89 days only. It is stated that petitioner was engaged for the period from 6.9.2004 to 4.12.2004 after executing a written agreement and thereafter petitioner had continued to work on contract basis under the above stated project by executing various agreements subsequently till 31.3.2008 the date on which the project in which the petitioner was appointed was closed by Government of India. It is thus claimed that engagement of petitioner was co-terminus with the project in which he was engaged. It is specifically claimed that petitioner had never worked with the department/respondent after March, 2008 and therefore question of giving fictional breaks to petitioner either in the year 2008 or 2010 as alleged did not arise and at the same time there can be no violation of any provisions of the Industrial Disputes Act. It can be further noticed from reply filed by respondent that terms and condition of engagement under the project was well within the knowledge of petitioner as he had executed various agreements of employment with respondent which were of temporary duration. Since petitioner was alleged to be engaged on the basis of agreements in which he had specifically stipulated that contract of engagement of petitioner of the first part shall stand disengaged automatically on the last working day on the expiry of contract and for the aforesaid reason, no notice was served upon the petitioner. It is also contended that no person junior to petitioner had been engaged by respondent after closure of the project in which the petitioner was appointed. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of demand notice, Ex. PW1/C copy of details of wages supplied to petitioner under the RTI Act and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent had examined RW1 Shri Rajesh Kumar, General Manager, District Industries Centre, Mandi tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of guidelines/project profile, Ex. RW1/C copy of letter dated 27.7.2007, Exts. R1 to R14 copies of various agreements executed between the parties commencing from 6.9.2004 to 31.3.2008, Ex. RW1/D copy of mandays chart of petitioner, Ex. RW1/E copy of seniority list, Ex. RW1/F copy of list of workers engaged in DRDA and closed evidence.

7. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

8. From contentions raised, following issues were framed by my ld. predecessor on 10.11.2014 for determination.

1. Whether time to time termination of services of the petitioner by the respondent is illegal and unjustified as alleged? If so, its effect? ...OPP.

2. Whether the petition is bad on account of delay and laches as alleged. If so, its effect? ...OPR.

3. Whether the petitioner has concealed the true and material factsfrom the Court as alleged. If so, its effect. ...OPR.

4. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : No
Issue No.3 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. It is admitted case of the respondent/department that claimant/petitioner was initially engaged as daily wager for 89 days in July, 2004 on contract basis by General Manager, District Industries Centre Mandi under the project namely Diversification in Agriculture (under Sericulture component) on behalf of the Chief Executive Officer (DC) DRDA, Mandi who continued to work with the respondent on contract basis till 31.3.2008 when the aforesaid project was closed by Government of India. It is equally admitted case of respondent that agreements Exts. R1 to R14 i.e. 14 agreements commencing from 6th September, 2004 to 31st March, 2008 were entered into between the parties and each agreement had duration of 89 days which further establishes that there was small break of few days in between two agreements consecutively. The case of petitioner on the other hand remains that he was engaged in July, 2004 and worked till 2010 as reflected in Ex. PW1/C i.e. wages paid to petitioner under RTI Act which manifestly belies the claim of the

respondent that ***the employment of petitioner was co-terminus with the project which ended with closure of project on 31.8.2008.*** Apparently, there is no acceptable reasons from the side of respondent/department as to how the petitioner is shown to be working till June, 2010 as reflected in Ex. RW1/C which is contrary to mandays chart Ex. RW1/D which testified plea of respondent that employment of petitioner was co-terminus with project which ended in 2008. As such, from the evidence on record the factual matrix which has got surfaced is that respondent claimed to have closed the project which was aided by Government of India on 31.3.2008 and the mandays chart Ex. RW1/D corresponds to their plea whereas the information qua or wages paid to petitioner supplied under RTI Act Ex. PW1/C in which he shown to have worked till 2010 needs to be scrutinized meticulously so as to determine the rights of claimant/petitioner and if he was entitled to protection envisaged under the Industrial Disputes Act.

11. Ld. AR/counsel for petitioner has relied upon the judgment reported in ***1997 LLR 67*** **titled as The Kurukshetra Central Co-op. Bank Ltd. through its Managing Director versus State of Haryana through the Secretary Labour and Employment Department, Government of Haryana Chandigarh & Others** in which the Hon'ble High Court has categorically held that '*repeated breaks in service for few days and re-employing the workman for limited period repeatedly time and again would come within the definition of unfair labour practice envisaged under Clause 5 (b) of Fifth Schedule of Industrial Disputes Act'*. It has been observed by Hon'ble High Court that employer cannot be permitted to act in such a way that may cause complete injustice to the workman and also to conventionally deviate from the provisions of law of retrenchment which necessarily requires one month's notice or compensation in lieu thereof at the time of retrenchment. It has also been observed that employer has every right to retrench a workman but law only prescribed that before it is so done, the procedure provided in Section 25-F of the Act is followed and if with a view to do away with the mandate of the law, the employer discharges or dismisses workman, the same has to be termed as ***'not in good faith, but the colourable exercise of the employer's right'.*** It has further been observed that if the work was available and somebody else is employed after discharging a workman on the plea that his employment was for limited period, the same would be on patently false reason if contract of employment specify the work is of a limited nature and as of short duration and as a matter of fact if the work is over which might take ***even little more time than specified in the contract***, the employer would have every right to discharge a workman on expiry of period mentioned in the contract or by extending the period till such time the work is over. In view of the ratio of the judgment aforestated coupled with evidence on record, it cannot be said that work was not available after 31st March, 2008 when the project was allegedly closed by the respondent but factually petitioner continued to work till 2010 as has come in the evidence.

12. Ld. AR/counsel for the petitioner has further relied upon the judgment of Hon'ble High Court of Punjab and Haryana reported in ***1996 LLR 259*** titled as **Bhikku Ram vs. The Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak** in which the Hon'ble High Court has held that appointment of petitioner for 89 days who continued to work for about three years with intermittent breaks and whose termination was without notice the same was held to be unfair labour practice within the meaning of Section 25-F of the Act. It was further held that if employer resisted the claim of workman and invokes Section 2 (oo) (bb) ***burden lies on employer to show that though the employee has worked for 240 days in 12 calendar months prior to termination of his service, such termination of service cannot be treated as retrenchment because it is in accordance with the terms of the contract of employment or on account of non-renewal of the contract of employment.*** It has to be shown by employer that workman had been engaged for specific purposes and the job which was being performed by the employee is no more required. The Hon'ble High Court has further observed as under: "……If the court finds that the exercise of rights by the employer is not bona fide or the employer has adopted the methodology of fixed term employment as a conduct or mechanism to frustrate the rights of the workman, the termination of

the service will not be covered by the exception contained in clause (bb). Instead the action of the employer will have to be treated as an act of unfair labour practice, as specified in the Fifth Schedule of the Act".

> *"The work against which the petitioner had been engaged was not a specified nature or of fixed duration. That work did not cease to exist on the date of termination of service of the petitioner. The job which was being performed by the petitioner continued to be required by the employer. Merely because the petitioner accepted the oppressive, unreasonable and arbitrary conditions of service, he cannot be denied relief despite the fact that the respondent society committed a patent violation of Section 25-F".*

13. In the case in hand, termination of the services of petitioner has certainly taken place in June, 2010, it has to be construed as unfair labour practice applying law laid down by the Hon'ble High Court referred to in foregoing paras of judgments. It is matter of serious concern that respondent till the time it filed reply to claim petition did not know that ***petitioner had factually worked upto June, 2010 and not upto 31st March, 2008*** as contended by respondent till when the project in question was closed by Government of India. A bare glance at mandays chart Ex. RW1/D would show that petitioner had, according to records of respondent, worked for **113** days in 2004, **332** days in 2005, **347** days in 2006, **353** days in 2007, **88** days in 2008 and thus he had worked total 1233 days by executing various agreements Exts. R1 to R14 as referred to above but stand so taken by respondent gets belied from information supplied to petitioner under the RTI Act which squarely showed details of wages paid to petitioner and this document showed that petitioner had worked for 144 days in 2004, 329 days in 2005, 343 days in 2006, 352 days in 2007, 88 days in 2008, 248 days in 2009 and 76 days in 2010. It can be further noticed from Ex. PW1/C that no muster roll had been issued to petitioner in the month of February and March, 2010. Similarly, in the year 2008 no muster roll had been issued to petitioner in the months of April, May, July, August, September, October, November and December, 2008. It can further be noticed from details of wages that initially, petitioner as daily wager was getting Rs.65/- per day till October, 2005, Rs.70/- per day in the year 2006, Rs.75/- in 2007, Rs.100/- in the year 2008, Rs.110/- in the year 2009 and similar amount was paid per day in 2010. The case of petitioner remains that no muster roll had been given to him in the month of February and March 2010 and similarly in the year 2008 similar approach was adopted by respondent who did not issue any muster roll to petitioner in the months of April, May and July to December, 2008 so that fictional break was created in the service record of petitioner.

14. The respondent on the other hand has further claimed that no junior has been appointed by the respondent after 31.3.2008 but from the evidence on record led by respondent, it is evident from Ex. RW1/E the copy of seniority list that one Hari Ram was appointed in 5th March, 2009 and similarly Ramesh Kumar had been appointed as peon on 22.5.2010. These officials/workmen are still working with the department and service of petitioner per the plea of respondent had been finally terminated and thus juniors can be stated to have been retained in service and consequently regularized which was in violation of Section 25-G of Act as fictional breaks had been given to petitioner despite the fact sufficient work was available.

15. Stepping into witness box as PW1, petitioner has maintained as alleged in claim petition deposing that his service condition had been unlawfully changed by respondent as he was given muster roll for 15-20 days instead of full month. He has also stated that his services had been disengaged illegally and arbitrarily and that two officials namely Ramesh Kumar was appointed in May, 2010 and Hari Ram on 05.3.2009 after closure of project on 31.3.2008 whereas the services of petitioner had been terminated on June, 2010 although petitioner claims to have completed more than 240 days prior to his termination in June, 2010 but on computing mandays on record he has actually worked for 221 days upto June, 2010 preceding his termination but as has been claimed

and proved that petitioner had been given fictional break who was not issued muster roll for the whole month. The petitioner shall be deemed to be in continuous service for 240 days by including even fictional break period of February and March, 2010 and subsequently in months of April, May and June, 2010 as it is established unfair labour practice on part of respondent who while exercising its position had terminated services of petitioner without giving any retrenchment notice or compensation in lieu thereof. In so far as the plea of respondent, there was no requirement for issuance of notice as agreement inter-se the parties automatically came to an end same is devoid of merit as respondent admitted engagement of petitioner only till 31st March, 2008 and has not whispered even a single word that petitioner had worked upto June, 2010 which primarily belies plea of respondent.

16. Ld. counsel/AR has pressed for grant of back wages to petitioner from date of alleged termination which has been repudiated by Ld. Dy. D.A. Reliance has been placed by Ld. counsel on judgment of **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324** in which Hon'ble Apex Court has observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments".*

17. Ld. Dy. D.A. for State has contended that petitioner has remained gainfully employed after his termination as well as during the period when petitioner did not attend his duties. Thus, allegation of petitioner having not been gainfully employed was specifically repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Hon'ble Justice A.R. Lakshmanan and Hon'ble Justice Altamas Kabir had held that ***'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'.*** Applying the ratio of judgment of 2007 (supra) to this case in hand since the petitioner was earning from his agricultural pursuits, as was admitted by him on oath the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court ***was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment.*** Since the petitioner had income from agriculture pursuits for his livelihood, it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages and aforesaid reasons judgment reported in **2014 LLR 673** titled as **Bhuvnesh Kumar Dwivedi vs. M/s. Hindalco Industries Ltd.** does not come to the rescue of petitioner as respondent has rightly discharged burden of proof. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and finally termination on June, 2010 and giving fictional breaks in service by the respondent during the service period was certainly illegal and unjustified and in contravention of provisions of Section 25-B and 25-G of the Act however with in the circumstances stated above, petitioner would be entitled to reinstatement, seniority, continuity in service and past service benefits **except back wages**. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 2

18. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2008 and finally on June, 2010 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by ld. Dy. D.A., ld. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of conciliation proceeding before authority under Act, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when his services were illegally terminated. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

ISSUE NO. 3

19. This issue was not pressed by ld. Dy. D.A. at the time of arguments. There is nothing on record of case to show that petitioner had concealing true and material facts affecting merits of case. Thus, vague plea of respondent being devoid of merit deserves to be rejected. Accordingly, issue in hand is answered in negative.

RELIEF

20. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith along with seniority and continuity in service from the date of his illegal termination **except back wages,** however the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. The parties, however, shall bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room. Announced in the open Court today this 4th day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA,
PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL,
KANGRA AT DHARAMSHALA (HP)

Ref No. : 207/2013
Date of Institution : 15.11.2013
Date of decision : 07.08.2015

Shri Babu Ram s/o Shri Gurdas Singh, r/o Village Nichla Kaloha, P.O. Kaloha, Tehsil Rakkar, District Kangra, H.P. ….*Petitioner*

Versus

The Divisional Forest Officer, Dehra Forest Division Dehra, District Kangra, H.P.
...*Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner(s) : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether time to time termination of the services of Shri Babu Ram, S/O Shri Gurdas Singh, R/O Village Nichla Kaloha, P.O. Kaloha, Tehsil Rakkar, District Kangra, H.P. during 2006 to 2012 and finally w.e.f. July, 2012 by the Divisional Forest Officer, Dehra Forest Division Dehra, District Kangra, H.P., without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Exworker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner had filed statement of claim before this court.

3. Brief facts as set up in the claim petition filed by petitioner reveal that he was engaged as forest worker/beldar on daily waged basis on muster roll in the year 1991 who continued to work uninterruptedly till April, 1998 under Rage Forest Officer, Dehra and thereafter was made to work as chowkidar w.e.f. May, 1998. Averments made in the claim petition reveal that on 17.5.1998 at night he along with Forest Beat Officer and one Yash Pal, forest guard were performing their duties when about 10.30 PM a truck bearing no. HP-19 1852 was intercepted by petitioner but the truck driver had attacked the petitioner and in the said incident arm of petitioner was got fractured due to which he was hospitalized in IGMC Shimla and Dr. Rajender Prasad Medical College, Tanda, Dharamshala. It is alleged that matter was reported to police on same night when FIR no.75/1998 dated 17.5.1998 had been registered at the Police Station Jawalamukhi under Section 325 IPC and as per advice of doctor, petitioner had resumed his duties who submitted medical certificate to Range Officer, Dehra requesting him to provide duties in the department *w.e.f.* 01.9.1998 but Range Officer had intimated petitioner that his services had already been terminated by Divisional

Forest Officer, Dehra *vide* verbal order dated 18.5.1998 due to which he could not be allowed to resume duties. It is alleged that petitioner thereafter approached respondent requesting him to allow him to join duty but respondent did not allow him rather totally refused to engage petitioner on duty. It is further alleged that petitioner thereafter approached the Hon'ble Administrative Tribunal by filing O.A. No.421/1998 in which an interim order dated 26.12.1998 was passed directing respondent to reengage petitioner whereupon petitioner was engaged in the year 1999 who worked upto 2000 completing 240 days in 2001 but during this period his services had been engaged and disengaged by respondent who gave him fictional break. It further remains the case of petitioner that when services of petitioner had been engaged and disengaged by respondent several persons junior to him were retained by respondent/department. It is alleged that O.A. no.421/1998 came up for final disposal before Hon'ble Administrative Tribunal on 29.6.2007 but same has been disposed off without any order on merit as due to lack of jurisdiction of Hon'ble Administrative Tribunal but petitioner was given liberty to approach the appropriate authority for redressal of his grievance. It is alleged that demand notice dated 9.8.2007 was served upon respondent and the copy of same was forwarded to Labour Inspector-cum-Conciliation Officer, Dehra and after failure of conciliation, report in question was submitted to Labour Commissioner for making reference whereupon Labour Commissioner had wrongly rejected the report of Labour Inspector ignoring that fictional breaks amount to retrenchment/termination under Section 2 (oo) of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act' for brevity) and that demand notice raised by petitioner under Section 2-A of the Act was correct as per schedule. It is alleged that petitioner had raised demand *vide* notice dated 18.6.2012 against the respondent department in pursuance to which Labour Commissioner had made reference for referring the matter to this court for adjudication. It is alleged that in pursuance to order dated 26.12.1998 passed by Hon'ble Administrative Tribunal in O.A. no.421/1998 as interim order to engage the service of petitioner was passed and for said reason department/respondent could not have disengage the services of petitioner between 1998 to 2007. It is contended that provisions of Section 25-G of the Act had not been followed by the respondent as the persons junior to petitioner namely S/Sh. Chaman Lal who joined on 2.2.1995, Jagir Singh who joined on 01.01.1997, Mahinder Singh who joined on 01.5.1996 and Subhash Chand who joined on 01.1.1996 were retained in service. The grievance of petitioner further remains that his date of birth has been recorded as 15.8.1954 who attained the age of 58 years when retired in contravention of fundamental rules 56 (b) which postulated retirement of daily waged worker at the age of 60 years. It is specifically stated that the daily waged workers working under department before 10.5.2001 were entitled for their superannuation retirement at the age of 60 years whereas action taken by respondent to retire petitioner as daily wage basis on attaining age of 58 years was violative of orders of State government as well as fundamental rule 56 (b). It is further contended that the act of respondent/department giving fictional break to petitioner from 1991 to July, 2012 is stated to be illegal, arbitrary, unconstitutional and against the mandatory provisions of the Industrial Disputes Act and tantamounts to unfair labour practice. Accordingly, petitioner has prayed for setting aside the break period from his initial date of engagement to July, 2012 besides directing respondent to condone the break period of service in continuity of his service. The petitioner also prays for any other relief to which he is found entitled as per facts and circumstances of the case.

4. The respondent resisted the claim petition filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits, it is stated that petitioner was initially appointed as casual labourer purely on temporary basis on seasonal forestry works during 1998 and not in 1991 as projected in his claim petition by petitioner. Admitted that respondent department had lodged an FIR no.75/1998 dated 27.5.1998 at Police Station Jawalamukhi against the incident which was registered on the basis of complaint. It is also admitted that petitioner was engaged/associated in raiding team on 17.5.1998 as casual labourer. It is also admitted that the plea of petitioner that he had filed O.A. no.421/1998 before the Hon'ble

Administrative Tribunal and as per interim order of Hon'ble Tribunal dated 26.12.11998, the petitioner was reengaged in 1999 who worked intermittently. It is further claimed that no fictional breaks had been given to petitioner rather he had abandoned the job of his own time and again and that no new person was engaged in place of petitioner. It is also claimed that petitioner had abandoned the job for which letters were issued to petitioner several time by the respondent but he did not receive the same. It is alleged that names of persons in para 9 of the claim petition were senior to petitioner as petitioner was engaged as intermittent worker in the year 1998 and since no junior had been retained provisions of Section 25-G of the Act could not have been violated by the respondent. It is also stated that petitioner was engaged purely on temporary basis as casual labourer and not as class-IV who was disengaged per provisions contained in H.P. Govt. letter No. PER (AP)-C-B(2)-1/2006 Vol. VIII dated 22.2.2010 as well as fundamental rule 56 (b). It is contended that petitioner was gainfully employed who had never completed 240 days of work continuously prior to his date of termination. Accordingly, petition is sought to be dismissed however the reply in question is supported with affidavit.

5. No rejoinder was filed by petitioner.

6. To prove his case, petitioner has examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of seniority list and Ex. PW1/C copy of FIR, Shri Paras Ram and Rajesh Kumar examined as PW2 and PW3 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Harjeet Singh, the then Divisional Forest Officer, Dehra as RW1, tendered/proved his affidavit Ex. RW1/A under Order 18 Rule 4 CPC, Ex. RW1/B copy of mandays chart of petitioner, Ex. RW1/C copy of letter dated 20.7.2003, Ex. RW1/D copy of report dated 21.7.2003, Ex. RW1/E copy of letter dated 29.7.2004, Ex. RW1/F copy of letter dated 22.11.2005, Ex. RW1/G copy of UPC, Ex. RW1/H copy of letter dated 29.7.2005 and Ex. RW1/I copy of report dated 14.11.2005 and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed by my ld. predecessor on 18.6.2014 for determination:

1. Whether time to time termination of the services of the petitioner during the year 2006 to 2012 by the respondent is illegal and unjustified as alleged? ...OPP.

2. Whether the final termination of services of the petitioner by the respondent in the month of July, 2012 is illegal and unjustified as alleged? ... OPP.

3. If issue No.1 is proved in affirmative, whether the petitioner is entitled to compensation. If so, what amount? ...OPP.
4. Whether the present claim petition/reference is not maintainable in the present form? ...OPR.
5. Whether the petition suffers from the vice of delay and laches as alleged. If so, its effect? ...OPR.

6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Yes
Issue No.3 : Discussed.
Issue No.4 : No
Issue No.5 : No

Relief : Petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES No. 1, 2 AND 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed off simultaneously without repetition of evidence.

11. It is admitted case of the parties that petitioner was disengaged from service when he was ageing 58 years in the year 2012 and was above the age of 60 years when Award in question was being answered. As such, plea of petitioner for reinstatement is not legally sustainable at this stage. It is to be seen if service of petitioner had been terminated i.e. engagement and disengagement from time to time by not providing him muster roll for 30 days in a month. In so far as initial engagement of petitioner by respondent is concerned, there is no authenticated evidence on record led by petitioner on record revealing that petitioner had been engaged in 1991 as claimed by him but petitioner being engaged as a casual labourer working along with forest officials at Kaloha Beat at about 10.30 PM on 17.5.1998 is not in dispute and it also not in dispute that petitioner had sustained grievous injury in the occurrence in which his arm got fractured. The fact of petitioner having been engaged in pursuance to interim order dated 26.12.1998 passed in O.A. no.421/1998 by Hon'ble Administrative Tribunal is not in dispute and that petitioner had been engaged in the year 1998 who continued to work upto the year 2000 as well as 2003 and thereafter petitioner is stated to have been not provided any muster roll for the year 2004 and 2005 whereas case of the respondent remained that petitioner himself had abandoned the job who did not report for duty despite persuasion by department to petitioner to resume duties. Be it noticed that reference which has been received from appropriate government relates to time to time termination of petitioner from the year **2006 to 2012** and **not prior to it** and termination finally in July,2012. As such, this court is to confine its findings only to the extent time to time termination from the year 2006 to 2012 only.

12. As per mandays chart Ex. RW1/B it is evident that in the year 2006 petitioner had worked for 187 days, 150 days in 2007, 192 days in 2008, 305 days in 2009, 347 days in 2010, 290 days in 2011 and till 31st 2012 petitioner had worked for 194 days. Close scrutiny of above said document further show that petitioner had worked for more than 240 days in preceding 12 calendar months prior to his date of termination although plea of respondent remains that petitioner had abandoned the job who did not resume his duties which was to be proved by leading reliable evidence as abandonment of job was to be proved like any other fact. Since absence from duty is serious misconduct which required respondent to initiate departmental proceedings or atleast should have notified petitioner qua unauthorized absence from duty but there is no reliable evidence on this score. Vide Ex. RW1/C copy of letter dated 20.7.2003 and Ex. RW1/E letter dated 29.7.2004, Ex. RW1/F letter dated 22.1.2005, Ex. RW1/H letter dated 29.7.2005 issued by respondent showed that petitioner had been called upon to resume duties but he refused to accept the notices as is evident from the report on the bottom of letter which nowhere shows signature of petitioner or atleast reports qua refusal in no manner show that petitioner had refused to receive notice in presence of any respectable person of the village where petitioner resided. In other word also, these letters appear to be earlier to 2005 whereas present reference referred for adjudication

pertains to period 2006 to 2012. There is no iota of evidence on record worth the name suggesting that petitioner had factually not resumed duties or the respondent had approached the petitioner calling him back on job in the years 2006 onwards still 2012. As such, it does not lie in the mouth of respondent that petitioner had abandoned the job instead plea of petitioner that his services were engaged and disengaged appears to reliable and trustworthy.

13. While stepping into witness box as PW1 petitioner Babu Ram sworn in affidavit Ex. PW1/A filed under Order 18 Rule 4 CPC submitting therein that he was performing duty on 17.5.1998 at Kaloha Beat when petitioner was hit by driver of truck no. HP-19 1852 and thereafter the petitioner had remained hospitalized at IGMC Shimla and Dr. Rajender Prasad Medical College Dharamshala. He has also deposed that FIR dated 27.5.1998 was registered under Section 325 IPC on 17.5.1998 but he has nowhere stated about the outcome of this FIR although petitioner has tried to state that he was engaged prior to order passed by Hon'ble Administrative Tribunal but the fact remains that petitioner had been engaged in the year 1999 on the basis of order dated 26.112.1998 passed by Hon'ble Administrative Tribunal. Since there is no authenticated evidence on record showing that petitioner had worked prior to 1998 as the mandays chart primarily reflected engagement of petitioner in 1998 only it would be unsafe to hold that petitioner was engaged earlier with the respondent. PW2 Shri Parveen Kumar and PW3 Shri Rajesh Kumar have coaxed in the same voice that they were engaged as forest workers in the year 1994 and 1995 respectively. PW2 has stated that he had never been given fictional break and that petitioner used to work along with him. Cross-examination of these witnesses revealed that petitioner was engaged in 1998 who used to visit office intermittently. He has further admitted that no person junior to petitioner had been retained. PW3 Rajesh Kumar has supported the petitioner's claim who maintained in examination-in-chief that in the year 1998 and 1999 petitioner used to visit intermittently but did not know about petitioner being deployed at forest naka as deposed by him. Thus from testimony of PW2 and PW3 petitioner cannot derive any benefit qua his attendance in the office or that he has performing duties as a forest beldar or chowkidar as claimed by him on the intervening night of 17th May, 1998. As such, plea of petitioner on this score remains unsubstantiated.

14. Before scrutinizing plea of respondent, it would be apt to mention here that case of petitioner is about his illegal termination and claim for consequential benefits whereas respondent has confused the matter by taking plea of retirement which is certainly not the correct position. Repudiating the evidence led by petitioner, respondent had examined Shri Harjeet Singh the then Divisional Forest Officer, Dehra who has stated that petitioner was engaged in 1998 and not in 1991 and was associated in naka laid at Kaloha Barrier on 17.5.1998 and due to incident which had taken place on 17.5.1998, an FIR no.75/1998 was registered at Jawalamukhi police station. It is also stated by this witness that petitioner was engaged purely on temporary basis as a casual labourer and there is no provision to reengage him after long absence period in daily wager duties besides petitioner called on job for time and again as per availability of work but petitioner refused to receive letters and that no fictional breaks had been ever given to petitioner besides maintained that no junior was even retained by respondent and thus there was no violation of provisions of Section 25-G of the Act. In so far as plea of time to time termination from 2006 to 2012 as contended by petitioner is concerned, suffice would be to state here that persons namely Chaman Lal, Jagir Siingh, Mahinder Singh and Subhash Chand who joined on 2.2.1995, 1.1.1997, 1.5.1996 and 1.1.1996 respectively were certainly senior to petitioner as per the case of respondent, petitioner was engaged in 1998. Thus, contents of para no. 9 of affidavit of petitioner is not substantiated from any corresponding record. Mandays chart Ex. RW1/B also shows that petitioner was appointed in 1998 when he initially worked for three days only. There is iota of evidence on record which would establish that any junior to petitioner was retained or not given break while giving any break to petitioner rather plea of fictional breaks from time to time at the behest of respondent is not at all established in view of fact that as per seniority list no one was junior to petitioner. It further remains the case of petitioner that petitioner being casual labourer and not

class-IV daily wager was disengaged on attaining the age of 58 years whose date of birth certificate was 15.08.1954. As per the provisions contained in HP Govt. letter No. PER (AP)-CB (2)-1/2006 Vol. VIII dated 22.1.2010, there was no violation of fundamental rules envisaged under Section 56 (b). It has also been contended that petitioner was gainfully employed as an agriculturist during the period of intermittent break and even after termination. It has been contended that petitioner had never completed 240 days continuous service for eight years, mandatorily required for regularization and that he had abandoned the job of his own sweet will and as such violation of provisions of Industrial Disputes Act did not arise. Accordingly, on oath respondent has refuted all the allegations of petitioner. In cross-examination, respondent has shown his inability to tell on which date petitioner was engaged. He has admitted that on 17.5.1998 petitioner was on duty who was injured when petitioner tried to intercept truck no. HP-19 1852 besides petitioner was taken for treatment at hospital. Be it noticed that respondent has specifically admitted that those employees who were engaged as casual labourer prior to **10.5.2001** could render their services upto the age of 60 years but the petitioner who was ageing 58 years was retired from service prior to 60 years. Ld. Dy. D.A. for State hence relied upon the Notification dated 10.5.2001 of government of H.P. Finance (Regulations) Department dealing with meaning of Rule 56 after clause (b). The rule in question provides that a class-IV Government servant appointed on or after the date of publication of this notification in Rajpatra Himachal Pradesh shall retire from service on the afternoon of the last day of the month in which he attained the age of 58 years. In **CWP No.7676/2010** titled as **Paras Ram vs. State of H.P. and others** decided on 15.3.2011 Hon'ble High Court of H.P. has held that in such like situation as has come in the present case, petitioner shall be deemed to have been retired on attainment of the age of 60 years. ***However, the actual benefits for the period of two years between 58 and 60 shall only be notional***. It was observed by Hon'ble High Court in other words "***benefit of declaration*** **as above shall enure to the petitioner only for the purpose of refixation of his pension and gratuity. He shall however not be entitled to the actual back wages".**

15. It has come in the evidence that petitioner was engaged in 1998 per reply filed by respondent in pursuance to interim order passed in O.A. no.421/1998 and this fact goes to show that petitioner as daily wager was to work till age of 60 years but was illegally terminated at age of 58 years. Since the petitioner was engaged on daily waged basis, no appointment letter was issued and thus appointment of petitioner was on day to day basis. Reliance is placed on judgment of **Hon'ble Supreme Court reported in (2006) 2 SCC 702** titled as **M.P. Housing Board and Another versus Manoj Shrivastava** has held that "***a daily wager does not hold a post unless he is appointed in terms of the Act and rules"***. Their Lordships had held that in rule 15, a daily wager does not hold a post unless he is appointed in terms of the Act and the Rules framed thereunder. He does not derive any legal right in relation thereto. Be it noticed that the notification of amendment dated 10.5.2001 is certainly prospective in nature. As such, serious error has been committed by respondent in terminating the services of petitioner in the year 2012 at the age of 58 years when he had not actually attained the age of superannuation as per amended rule. As such, the petitioner may not be actually entitled for two years actual wages but has to be given notional benefit as per observation made by Hon'ble High Court of H.P. in CWP7676/2010. Ld. counsel for petitioner has contended that fictional breaks were given to the petitioner prior to 1998 and thereafter finally terminated his services at the age of 58 years who was not allowed to complete age of 60 years certainly entitles petitioner for compensation for the lapses of the respondent more particularly, when petitioner can no more be reinstated or reengaged as he has already crossed the age of 61 years by now. It has rightly been contended by the ld. counsel for petitioner that respondent had caused undue harassment due to which the petitioner should be reasonably compensated particularly when petitioner on the date of Award has already completed the age of 60 years could not be reinstated or reengaged.

16. Ld. counsel/AR for petitioner has relied upon the judgment of Hon'ble Apex Court reported in **2015 (145) FLR 725** titled as **Manager (Factory) Maharashtra State Co-operative Marketing Federation Ltd. and another vs. Suresh** in which the Hon'ble Apex Court has held that when appointment of daily waged was irregular and the unit was closed down, reinstatement was not justified and compensation of Rs.2 lakhs was awarded as lump sum compensation with cost of litigation of Rs.25,000/-. The Hon'ble Apex Court has observed that it would be just and proper not to reinstate the respondent, especially in view of the fact that firstly the respondent had hardly worked for a period for one and half year and secondly his appointment was irregular and the unit of employer was closed. In the case in hand that unit although is continuously functioning but petitioner cannot be reinstated as he has crossed the age of 60 years on the date of Award and appropriate relief to petitioner would be lump sum compensation. Similar view was taken by Hon'ble Apex Court in judgment titled as **Bhavanagar Municipal Corporation etc. vs. Jadeja Govubha Chhanubha & Anr. 2015 LLR 160** in which it had been held that illegality in the order of termination on account of nonpayment of retrenchment compensation does not necessarily attract reinstatement. It was also observed that the concept of lump sum compensation in view of short length of service, long litigation and closure of establishment or relevant job is appropriate looking to the totality of the circumstances to meet the ends of justice. In the aforesaid judgment 2015 (supra) lump sum compensation was awarded in lieu of reinstatement. Similar view was taken by Hon'ble Apex Court in case titled as Collector Sungh vs. LML Ltd. Kanpur reported in 2015 LLR 1. Applying to ratio of aforestated judgments too, it would be appropriate if petitioner is awarded lump sum compensation instead of his reinstatement. In view of the foregoing discussion, I proceed to hold that final termination of service of petitioner in July, 2012 by respondent was certainly illegal and unjustified and that appropriate relief which can be granted to petitioner is to award him by way compensation in lump sum. Accordingly, taking into consideration the facts and circumstances of case, prevalent wages of the casual labourer and case law referred to above, I deem appropriate if petitioner is awarded lump sum compensation of `50,000/- (Rupees fifty thousand only) in lieu of retrenchment compensation who is further held entitled for costs of `10,000/- (Rupees ten thousand only) of litigation. All three issues are decided accordingly.

ISSUE NO. 4

17. In view of my findings on foregoing issues, the claim petition as filed by the petitioner can be safely held to be maintainable. There is nothing in record showing in what manner claim petition as contended by respondent is not maintainable. Hence, issue in hand is decided in favour of petitioner and against the respondent.

ISSUE NO.5

18. Ld. counsel for petitioner has contended that industrial dispute has been raised by petitioner promptly on being terminated in 2012 at the age when he was 58 years. On the other hand, ld. Dy. D.A. has contended with vehemence that there is unexplained delay in filing demand notice. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and

applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. There is nothing in evidence which would show that delay and laches on part of petitioner. Nothing in crossexamination of petitioner has been asked which showed that any prejudice had been caused to respondent. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

19. Thus, when no material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent, it would be unsafe to hold that petition of claimant is hit by the vice of delays and laches as claimed by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

20. As a sequel to my findings on forgoing issues, the instant claim petition is allowed in part. Accordingly, the respondent is hereby directed to pay the compensation of ₹50,000/- (Rupees Fifty Thousand only) to the petitioner in lieu of the reinstatement of his services as well as the other consequential benefits and cost ₹10,000/- (Rupees Ten Thousand only) as litigation costs. It is further ordered that amounts of ₹60,000/- as stated above shall be paid by the respondent to the petitioner or deposited in this Court within a period of 60 days from today failing which respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of Award till the date of payment/deposit of amount aforestated.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room. Announced in the open Court today this 7th day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K.SHARMA
PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL,
KANGRA AT DHARAMSHALA, H.P.
(CAMP AT CHAMBA)

Ref No. : 135/2014
Date of Institution : 05.4.2014
Date of decision : 11.8.2015

Shri Hans Raj s/o Shri Hardeu, r/o V.P.O. Killod, Tehsil Salooni, District Chamba, H.P.
…Petitioner.

Versus

The Deputy Director Horticulture, Horticulture Department Chamba, District Chamba, H.P.
…Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Hans Raj, S/O Shri Hardeu, R/O V.P.O. Killod, Tehsil Salooni, District Chamba, H.P. during year 2006 by the Deputy Director Horticulture, Horticulture Department Chamba, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim before this court.

3. Brief facts as set up in the statement of claim reveal that petitioner was engaged as daily waged on muster roll basis with the respondent department in PCDO Killod under HDO Salooni/Kollod w.e.f. 01.7.1997 who worked continuously till 21.3.2006, when respondent had orally terminated his services without any reason whereas the workers junior to petitioner had continuously retained by the respondent department and their services have been regularized but the services of petitioner were terminated on 21.3.2006. It is further alleged that when the services of petitioner were illegally terminated orally on 21.3.2006 it was assured that petitioner would be engaged on contract basis and thereafter petitioner had made many requests with the officers/officials concerned of respondent/department not to change his service condition from daily wage to contract but of no avail. It is alleged that petitioner had given short term/spell of 10-15 days on contract basis in a year just to deprive the petitioner from continuity and seniority which is unfair labour practice whereas the respondent had retained junior workers continuously on muster roll basis who were consequently regularized. It is further alleged that respondent had not followed the relevant provisions of Industrial Disputes Act, 1947 (hereinafter called as 'the Act' for

brevity) and had also not taken any prior approval from the appropriate government as well as written consent from petitioner and as such the respondent/department had changed the service conditions of petitioner due to which he could not complete criteria of 240 days in each calendar year depriving petitioner from benefit of regularization. It is further averred that the respondent had appointed/engaged many persons junior to the petitioner namely Devi Parshad, Jagat Ram, Man Singh, Mukesh Kumari, Punam, Shakuntla, Sushil Kumar, Kartar Chand, Devinder, Kaushalya, Sudarshan Devi and Bachan Singh who were appointed in the years 1997, 1998, 1999, 2000, 2001, 2003 and 2004 respectively who have since been regularized. It is also averred that respondent had not followed the provisions of Section 25-G of the Act while engaging the services of abovestated juniors on muster roll but changed the service condition of petitioner. It is further alleged that respondent had given spotless services to the respondent/department who had never been charge-sheeted for any act of indiscipline, negligence of work or misconduct however petitioner had worked with full devotion. It is alleged that respondent had committed gross violation of statutory provision of Sections 25-B, 25-F, 25-G and 25-H of the Act in malafide, arbitrary, unconstitutional, illegal and unjustified manner and also against the principle of natural justice which amounts to "unfair labour practice". The petitioner thus prayed that oral orders of illegal termination/retrenchment from daily waged services from 21.3.2006 be set aside being illegal, malafide, arbitrary and unjustified and petitioner be engaged on daily waged basis because as juniors workmen engaged after him had been working continuously on daily waged basis with the respondent. It is further prayed that the petitioner be reinstated along with full back wages, seniority, continuity in service as the petitioner remained unemployed from the date of his illegal retrenchment/termination.

4. The claim filed by the petitioner was contested by the respondent by filing a reply inter-alia taking preliminary objections qua maintainability, claim of the petitioner being bad on account of delay and laches. On merits, it is contended that the petitioner was initially engaged as daily waged labourer to carryout seasonal and occasional work on 01.7.1997 subject to work and funds besides stated that he had not completed 240 days in any calendar year since his initial engagement was as intermittent worker for seasonal work and the petitioner had worked with the respondent as per his own convenience and sweet will. It is further stated that petitioner had worked with the respondent/department upto February 2006 and thereafter 'abandoned' the job at his own sweet will and convenience and never reported for work after 2006. It is, however, denied that the services of the petitioner had been terminated by the respondent and that the services of junior workmen had been retained by respondent continuously and thus respondent had not violated provisions of Section 25-G of the Act. It is denied that respondent has intentionally provided work to petitioner for short term/spell of 10-15 days besides he had never given assurance to petitioner to engage him on contract basis. It is also denied that respondent had changed the service condition of petitioner who had never completed 240 days of work in each calendar year since petitioner did not come for work with the respondent after the year 2006. It is averred that only those workers had been regularized by the respondent/department who had completed the requisite criteria for regularization as per the government policy and as such the respondent had not violated any principle of 'Last come First go'. It is stated that the services of petitioner were engaged by the respondent intermittently for seasonal work which fact had already known to petitioner and no fictional breaks were ever given to petitioner by the respondent. It is contended that no new/fresh workmen/labourers had been engaged by respondent and as such there was no violation of provisions of Section 25-G and 25-H of the Act. The respondent thus alleges claim petition to be devoid of merit which was accordingly sought to be dismissed.

5. The petitioner filed rejoinder to reply filed by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B, Ex. PW1/C, Ex. PW1/D copies of seniority lists of casual labourers, Ex. PW1/E copy of Award dated 19.5.2011 passed in Reference No.45 of 2008 by this court and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Shashi Sharma, Deputy Director, Horticulture, Chamba as RW1 who tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. RW1/B copy of mandays chart of petitioner, Ex. RW1/C copy of letter dated 6.2.2006, Ex. RW1/D copy of seniority list of labourers in respect of o/o DDH Chamba and closed evidence.

7. From the contentions raised, following issues were framed on 17.4.2015 for determination:

1. Whether termination of services of the petitioner by the respondent during the year 2006 is/was improper and unjustified as alleged? . .OPP.

2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? . . OPP.
3. Whether the petition is not maintainable in the present form? . . OPR.

4. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? . . OPR.

5. Relief.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No

Relief. : Petition is allowed per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is admitted case of the parties that the services of the petitioner were engaged by respondent on 01.7.1997 who worked intermittently till 21.3.2006. Be it noticed that the respondent had not placed/exhibited on record any document evidencing that the services of the petitioner used to be engaged for specific period and work to his knowledge. The case of the petitioner remains that he was engaged as beldar by the respondent on 01.7.1997 till 21.3.2006 on which date his services were illegally terminated and that he had completed 240 days continuously within calendar

year. On the other hand, it is the plea of the respondent that the petitioner was engaged as casual labourer on 01.7.1997 who had not completed 240 days in any calendar year since his initial engagement as he had abandoned the job at his own sweet will and convenience in the month of February, 2006. However, there is nothing on record to establish that that the petitioner had completed 240 days in the 12 calendar months preceding his termination except bald statement of the petitioner. On the other hand, the mandays chart of the petitioner which has been placed on record as Ex. RW1/B by the respondent establish that the petitioner has factually not completed 240 days in 12 calendar months preceding his termination. The perusal of mandays chart of the petitioner Ex. RW1/B shows that he hasworked only for 133 days during the year 1997, 205 days in 1998, 167 days in 1999, 150 days in 2000, 123 days in 2001, 180 days in 2002, 121 days in 2003, 120 days in 2004, 138 days in 2005 and 36 days in 2006. In view of mandays chart referred to above plea of petitioner to have completed 240 days in 12 calendar months preceding his termination cannot be accepted and his retrenchment cannot be said to be in derogation of the provisions of Section 25-F of the Act.

12. It is also the plea of the petitioner that the services of Shakuntla Devi and Kaushalya Devi and others as mentioned in his affidavit have been regularized despite the fact that they were appointed after petitioner however such plea of the petitioner has been denied by the respondent. On the other hand, plea of the respondent remains that persons figuring at serial nos. 17 to 24 in the seniority list Ex. RW1/D were reengaged as per orders of the Hon'ble High Court and they were not junior to the petitioner. It further the plea of respondent that services of workmen at serial no. 17 to 24 have been regularized as they had completed 240 days in each calendar year which was only the criteria for regularization of daily wagers.

13. The plea of the petitioner remains that his services were illegally terminated by the respondent by verbal order in February, 2006 which had been denied by respondent. On the contrary it is the plea of the respondent that the petitioner had left the job of his own accord and free volition. To support the plea of the abandonment, the respondent had examined Shri Shashi Sharma, Deputy Director, Horticulture, Chamba as RW1 who has deposed that the services of petitioner were engaged in the year 1997 who worked upto 2006. It is admitted that department had engaged petitioner on muster roll basis however denied services of petitioner were retrenched. It is admitted that neither notice nor compensation in lieu of notice was ever given to petitioner. It is admitted that no approval was taken from the government at the time of retrenchment of the service of petitioner. It is denied that department had not followed principle of 'Last come First go'. It is admitted that when respondent/department had given work to petitioner he always remained present for the work. It is denied that petitioner was not kept on seasonal work. There is nothing on record to remotely suggest that any notice was served upon the petitioner for his willful and unauthorized absence from the duty. There is also no documentary evidence on record to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Nothing except the bald statement of RW-1, the respondent in this case there is nothing to show that the petitioner had in fact abandoned the job. It is well settled preposition of law that the 'abandonment' has to be established by leading evidence and it is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled **State of H.P. vs. Bhatag Ram and Anr. (2007 Latest HLJ 903).** Absence from duty is a serious misconduct and admittedly no disciplinary proceedings was ever initiated against the petitioner by the respondent for his alleged willful absence from duty. In view of same, bald and uncorroborated statement of RW-1 cannot be relied upon qua allegation of abandonment of job by petitioner and on the basis of uncorroborated statement of RW-1, the plea of abandonment has been put forth by the respondent cannot be held to have been established and thus it cannot be held that the petitioner had not factually abandoned the job.

14. It is the plea of the petitioner that the persons junior to him namely Devi Parshad, Jagat Ram, Man Singh and others have been retained in service which is in violation of the provisions of Section 25-G of the Act. It is not disputed by the respondent that the abovestated workmen were engaged as casual labourers with the respondent who were still continuously working. This fact is also finds support from seniority list Ex. RW1/D, which establishes that workmen mentioned in serial nos. 17 to 24 were initially engaged during the years 1998, 1999, 2000 & 2001 respectively and thus they were junior to the petitioner who was admittedly engaged during July, 1997 and have been retained in service by the respondent/department and still continuously working with the respondents. In his cross-examination, RW1 has specifically admitted when petitioner and other workers were retrenched in the year 2006 and that some of the workers had been reengaged by the respondent/department except the petitioner and their services had been regularized. In view of foregoing, the respondent can be safely held to have violated the provisions of Section 25-G of the Act which is mandatory in nature and non compliance of the said provision vitiates retrenchment entitling petitioner for relief claimed.

15. It is by now well settled that for seeking the protection of Sections 25-G of the Act, the requirement of having completed 240 days is not a condition precedent as has been held by the Hon'ble Supreme Court in **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** and **Harjinder Singh vs. Punjab State Warehousing Corporation, AIR 2010 SC 1116**. **In HP State Electricity Board vs. Shri Charan Dass 2012(1) Him. L.R. (DB) 320**. It has come in the evidence that respondent failed to establish that the petitioner has abandoned the job of his own free will and the respondent retained the persons junior to the petitioner in service and it was the case of the respondent itself that no person junior to the petitioner save and except those who were ordered to be reinstated by the Court, were retained in service. In such circumstances, it was held by the Hon'ble High Court of H.P. that the plea of the respondent itself reveals that the persons junior to the petitioner have been retained in service and as such the respondent has violated the provisions of Sections 25-G and 25-H of the Act and the completion of 240 days by the workman in a calendar year is not required for seeking the protection under Sections 25-G and 25-H of the Act in view of law laid down in judgments (supra).

16. Thus, in view of such settled preposition of law even if the petitioner has not completed the requisite number of days in the 12 calendar months preceding his termination, the respondent was still bound to follow the principle of 'last come first go', which has not been done in the present case while engaging junior persons. Thus, the termination of the services of the petitioner is illegal being against the mandatory provisions of Sections 25-G of the Act. Consequently, the termination of the services of the petitioner is liable to be set aside.

17. On perusal of the statement of claim as filed by the petitioner and his statement while appearing as PW1, it is clear that the petitioner has not uttered a single word that he was not gainfully employed during the period of his retrenchment till filing of the claim. Rather he has admitted that he had cultivable land from which he could have his livelihood. In view of this, the petitioner has failed to discharge the initial onus that during the period of his retrenchment till filing of the claim, he was not gainfully employed. The petitioner while appearing as PW1 has stated his age as 40 years and it can be safely assumed that a young man like the petitioner would not have sat ideally at home during the period despite the fact that he was out of the job. For these reasons, the petitioner is held notentitled to the back wages.

18. Since the termination of the services of the petitioner by the respondent has been held to be illegal being in contravention of the provisions of Section 25-G of the Act as discussed in my findings in foregoing paras, the petitioner is ordered to be reinstated forthwith who shall be also entitled to seniority and continuity in service from the date of his illegal termination. In view of what has been stated above thus, issue no.1 is answered in affirmative and issue no.2 is answered accordingly.

ISSUE NO. 3

19. In view of my findings on issue no.1, the claim petition as filed by the petitioner can be safely held to be maintainable. There is nothing in record showing in what manner claim petition is not maintainable. Hence, the issue in hand is decided in favour of petitioner and against the respondent.

ISSUE NO. 4

20. It is the plea of the petitioner himself that his services were orally terminated by the respondent on 21.2.2006. It is further clear on the reference made to this Court that the petitioner had raised the dispute vide demand notice and on thebasis of demand notice raised, conciliation proceedings were initiated by the Labour Officer-cum-Conciliation Officer, Chamba, Distt. Chamba, H.P. which took sufficient time. However, the dispute could not be settled by the Labour Officercum-Conciliation Officer and consequently sent the failure report under Section 12(4) of the Act to the Labour Commissioner, H.P. and thereafter matter was referred to the Labour Court-Cum-Industrial Tribunal for adjudication.

21. It is by now well settled that in case a dispute is referred to this Tribunal for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (supra). **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In Ramesh Chand vs. Union of India, CWP No. 812 of 2000, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice.

22. No material has been placed on record by the respondent to hold that there was unexplained unreasonable delay on the part of the petitioner in raising the dispute initially before the Labour authorities and later before this Court. Thus in view of the aforesaid settled position of law coupled with the findings recorded by the Hon'ble High Court of H.P. in CWP No.4424 of 2012 filed by the petitioner, which was decided vide order dated 10.4.2013, the petition as filed by the petitioner cannot be held to hit by the vice of delay and laches as alleged by the respondents. Hence, this issue in hand is decided against the respondent and in favour of peititoner.

RELIEF

23. As a sequel to my findings on foregoing issues, the reference petition is allowed in part in favour of petitioner and the termination of the services of the petitioner is hereby set aside directing respondent to reinstate the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. It is further ordered that respondent shall consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. Keeping in view peculiar circumstances of case, the parties are left to bear their own cots.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room. Announced in the open Court today this 11th day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K.SHARMA
PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL,
KANGRA AT DHARAMSHALA, H.P.
(CAMP AT CHAMBA)

Ref No. : 255/2014

Date of Institution : 14.8.2014

Date of decision : 11.8.2015

Shri Dharam Chand s/o Shri Kantah Ram, r/o V.P.O. Killod, Tehsil Salooni, District Chamba, H.P. …*Petitioner*

Versus

The Deputy Director Horticulture, Horticulture Department Chamba, District Chamba, H.P. …*Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

> "Whether termination of the services of Shri Dharam Chand, S/O Shri Kantah Ram, R/O V.P.O. Killod, Tehsil Salooni, District Chamba, H.P. during 2006 by the Deputy Director Horticulture, Horticulture Department Chamba, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim before this court.

3. Brief facts as set up in the statement of claim reveal that petitioner was engaged as daily waged on muster roll basis with the respondent department in PCDO Killod under HDO Salooni/Kollod w.e.f. 09.9.1997 who worked continuously till 21.3.2006, when respondent had orally terminated his services without any reason whereas the workers junior to petitioner had continuously retained by the respondent department and their services have been regularized but the services of petitioner were terminated on 21.3.2006. It is further alleged that when the services of petitioner were illegally terminated orally on 21.3.2006 it was assured that petitioner would be engaged on contract basis and thereafter petitioner had made many requests with the officers/officials concerned of respondent/department not to change his service condition from daily wage to contract but of no avail. It is alleged that petitioner had given short term/spell of 10-15 days on contract basis in a year just to deprive the petitioner from continuity and seniority which is unfair labour practice whereas the respondent had retained junior workers continuously on muster roll basis who were consequently regularized. It is further alleged that respondent had not followed the relevant provisions of Industrial Disputes Act, 1947 (hereinafter called as 'the Act' for brevity) and had also not taken any prior approval from the appropriate government as well as written consent from petitioner and as such the respondent/department had changed the service conditions of petitioner due to which he could not complete criteria of 240 days in each calendar year depriving petitioner from benefit of regularization. It is further averred that the respondent had appointed/engaged many persons junior to the petitioner namely Devi Parshad, Jagat Ram, Man Singh, Mukesh Kumari, Punam, Shakuntla, Sushil Kumar, Kartar Chand, Devinder, Kaushalya, Sudarshan Devi and Bachan Singh who were appointed in the years 1997, 1998, 1999, 2000, 2001, 2003 and 2004 respectively who have since been regularized. It is also averred that respondent had not followed the provisions of Section 25-G of the Act while engaging the services of abovestated juniors on muster roll but changed the service condition of petitioner. It is further alleged that respondent had given spotless services to the respondent/department who had never been charge-sheeted for any act of indiscipline, negligence of work or misconduct however petitioner had worked with full devotion. It is alleged that respondent had committed gross violation of statutory provision of Sections 25-B, 25-F, 25-G and 25-H of the Act in malafide, arbitrary, unconstitutional, illegal and unjustified manner and also against the principle of natural justice which amounts to "unfair labour practice". The petitioner thus prayed that oral orders of illegal termination/retrenchment from daily waged services from 21.3.2006 be set aside being illegal, malafide, arbitrary and unjustified and petitioner be engaged on daily waged basis because as juniors workmen engaged after him had been working continuously on daily waged basis with the respondent. It is further prayed that the petitioner be reinstated along with full back wages, seniority, continuity in service as the petitioner remained unemployed from the date of his illegal retrenchment/termination.

4. The claim filed by the petitioner was contested by the respondent by filing a reply inter-alia taking preliminary objections qua maintainability, claim of the petitioner being bad on account of delay and laches. On merits, it is contended that the petitioner was initially engaged as daily waged labourer to carryout seasonal and occasional work on 01.8.1997 subject to work and funds besides stated that he had not completed 240 days in any calendar year since his initial engagement was as intermittent worker for seasonal work and the petitioner had worked with the respondent as per his own convenience and sweet will. It is further stated that petitioner had worked with the respondent/department upto February 2006 and thereafter 'abandoned' the job at his own sweet will and convenience and never reported for work after 2006. It is, however, denied that the services of the petitioner had been terminated by the respondent and that the services of junior workmen had been retained by respondent continuously and thus respondent had not violated provisions of Section 25-G of the Act. It is denied that respondent has intentionally provided work to petitioner for short term/spell of 10-15 days besides he had never given assurance to petitioner to engage him on contract basis. It is also denied that respondent had changed the service condition of petitioner who had never completed 240 days of work in each calendar year since petitioner did not come for work with the respondent after the year 2006. It is averred that only those workers had been regularized by the respondent/department who had completed the requisite criteria for regularization as per the government policy and as such the respondent had not violated any principle of 'Last come First go'. It is stated that the services of petitioner were engaged by the respondent intermittently for seasonal work which fact had already known to petitioner and no fictional breaks were ever given to petitioner by the respondent. It is contended that no new/fresh workmen/labourers had been engaged by respondent and as such there was no violation of provisions of Section 25-G and 25-H of the Act. The respondent thus alleges claim petition to be devoid of merit which was accordingly sought to be dismissed.

5. The petitioner filed rejoinder to reply filed by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B, Ex. PW1/C, Ex. PW1/D copies of seniority lists of casual labourers, Ex. PW1/E copy of Award dated 19.5.2011 passed in Reference No.45 of 2008 by this court and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Shashi Sharma, Deputy Director, Horticulture, Chamba as RW1 who tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. RW1/B copy of mandays chart of petitioner, Ex. RW1/C copy of letter dated 6.2.2006, Ex. RW1/D copy of seniority list of labourers in respect of o/o DDH Chamba and closed evidence.

7. From the contentions raised, following issues were framed on 17.4.2015 for determination:

1. Whether termination of services of the petitioner by the respondent during the year February, 2006 is/was improper and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? *OPP*
3. Whether the petition is not maintainable in the present form? *OPR*
4. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? *OPR*
5. Relief.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No

Relief. : Petition is allowed per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is admitted case of the parties that the services of the petitioner were engaged by respondent on 09.9.1997 who worked intermittently till 21.3.2006. Be it noticed that the respondent had not placed/exhibited on record any document evidencing that the services of the petitioner used to be engaged for specific period and work to his knowledge. The case of the petitioner remains that he was engaged as beldar by the respondent on 09.9.1997 till 21.3.2006 on which date his services were illegally terminated and that he had completed 240 days continuously within calendar year. On the other hand, it is the plea of the respondent that the petitioner was engaged as casual labourer on 01.8.1997 who had not completed 240 days in any calendar year since his initial engagement as he had abandoned the job at his own sweet will and convenience in the month of February, 2006. However, there is nothing on record to establish that that the petitioner had completed 240 days in the 12 calendar months preceding his termination except bald statement of the petitioner. On the other hand, the mandays chart of the petitioner which has been placed on record as Ex. RW1/B by the respondent establish that the petitioner has factually not completed 240 days in 12 calendar months preceding his termination. The perusal of mandays chart of the petitioner Ex. RW1/B shows that he has worked only for 91 days during the year 1997, 163 days in 1998, 133 days in 1999, 127 days in 2000, 78 days in 2001, 90 days in 2002, 76 days in 2003, 76 days in 2004, 132 days in 2005 and 27 days in 2006. In view of mandays chart referred to above plea of petitioner to have completed 240 days in 12 calendar months preceding his termination cannot be accepted and his retrenchment cannot be said to be in derogation of the provisions of Section 25-F of the Act.

12. It is also the plea of the petitioner that the services of Shakuntla Devi and Kaushalya Devi and others as mentioned in his affidavit have been regularized despite the fact that they were appointed after petitioner however such plea of the petitioner has been denied by the respondent. On the other hand, plea of the respondent remains that persons figuring at serial nos. 17 to 24 in the seniority list Ex. RW1/D were reengaged as per orders of the Hon'ble High Court and they were not junior to the petitioner. It further the plea of respondent that services of workmen at serial no. 17 to 24 have been regularized as they had completed 240 days in each calendar year which was only the criteria for regularization of daily wagers.

13. The plea of the petitioner remains that his services were illegally terminated by the respondent by verbal order in February, 2006 which had been denied by respondent. On the contrary it is the plea of the respondent that the petitioner had left the job of his own accord and free volition. To support the plea of the abandonment, the respondent had examined Shri Shashi

Sharma, Deputy Director, Horticulture, Chamba as RW1 who has deposed that the services of petitioner were engaged in the year 1997 who worked upto 2006. It is admitted that department had engaged petitioner on muster roll basis however denied services of petitioner were retrenched. It is admitted that neither notice nor compensation in lieu of notice was ever given to petitioner. It is admitted that no approval was taken from the government at the time of retrenchment of the service of petitioner. It is denied that department had not followed principle of 'Last come First go'. It is admitted that when respondent/department had given work to petitioner he always remained present for the work. It is denied that petitioner was not kept on seasonal work. There is nothing on record to remotely suggest that any notice was served upon the petitioner for his willful and unauthorized absence from the duty. There is also no documentary evidence on record to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Nothing except the bald statement of RW-1, the respondent in this case there is nothing to show that the petitioner had in fact abandoned the job. It is well settled preposition of law that the 'abandonment' has to be established by leading evidence and it is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled **State of H.P. vs. Bhatag Ram and Anr. (2007 Latest HLJ 903).** Absence from duty is a serious misconduct and admittedly no disciplinary proceedings was ever initiated against the petitioner by the respondent for his alleged willful absence from duty. In view of same, bald and uncorroborated statement of RW-1 cannot be relied upon qua allegation of abandonment of job by petitioner and on the basis of uncorroborated statement of RW-1, the plea of abandonment has been put forth by the respondent cannot be held to have been established and thus it cannot be held that the petitioner had not factually abandoned the job.

14. It is the plea of the petitioner that the persons junior to him namely Devi Parshad, Jagat Ram, Man Singh and others have been retained in service which is in violation of the provisions of Section 25-G of the Act. It is not disputed by the respondent that the abovestated workmen were engaged as casual labourers with the respondent who were still continuously working. This fact is also finds support from seniority list Ex. RW1/D, which establishes that workmen mentioned in serial nos. 17 to 24 were initially engaged during the years 1998, 1999, 2000 & 2001 respectively and thus they were junior to the petitioner who was admittedly engaged during August, 1997 and have been retained in service by the respondent/department and still continuously working with the respondents. In his cross-examination, RW1 has specifically admitted when petitioner and other workers were retrenched in the year 2006 and that some of the workers had been reengaged by the respondent/department except the petitioner and their services had been regularized. In view of foregoing, the respondent can be safely held to have violated the provisions of Section 25-G of the Act which is mandatory in nature and non compliance of the said provision vitiates retrenchment entitling petitioner for relief claimed. rovisions of Sections 25-G and 25-H of the Act and the completion of 240 days by the workman in a calendar year is not required for seeking the protection under Sections 25-G and 25-H of the Act in view of law laid down in judgments (supra).

16. Thus, in view of such settled preposition of law even if the petitioner has not completed the requisite number of days in the 12 calendar months preceding his termination, the respondent was still bound to follow the principle of 'last come first go', which has not been done in the present case while engaging junior persons. Thus, the termination of the services of the petitioner is illegal being against the mandatory provisions of Sections 25-G of the Act. Consequently, the termination of the services of the petitioner is liable to be set aside.

17. On perusal of the statement of claim as filed by the petitioner and his statement while appearing as PW1, it is clear that the petitioner has not uttered a single word that he was not gainfully employed during the period of his retrenchment till filing of the claim. Rather he has admitted that he had cultivable land from which he could have his livelihood. In view of this, the

petitioner has failed to discharge the initial onus that during the period of his retrenchment till filing of the claim, he was not gainfully employed. The petitioner while appearing as PW1 has stated his age as 40 years and it can be safely assumed that a young man like the petitioner would not have sat ideally at home during the period despite the fact that he was out of the job. For these reasons, the petitioner is held not entitled to the back wages.

18. Since the termination of the services of the petitioner by the respondent has been held to be illegal being in contravention of the provisions of Section 25-G of the Act as discussed in my findings in foregoing paras, the petitioner is ordered to be reinstated forthwith who shall be also entitled to seniority and continuity in service from the date of his illegal termination. In view of what has been stated above thus, issue no.1 is answered in affirmative and issue no.2 is answered accordingly.

ISSUE NO. 3

19. In view of my findings on issue no.1, the claim petition as filed by the petitioner can be safely held to be maintainable. There is nothing in record showing in what manner claim petition is not maintainable. Hence, the issue in hand is decided in favour of petitioner and against the respondent.

ISSUE NO. 4

20. It is the plea of the petitioner himself that his services were orally terminated by the respondent on 21.2.2006. It is further clear on the reference made to this court that the petitioner had raised the dispute vide demand notice and on the basis of demand notice raised, conciliation proceedings were initiated by the Labour Officer-cum-Conciliation Officer, Chamba, Distt. Chamba, H.P. which took sufficient time. However, the dispute could not be settled by the Labour Officercum- Conciliation Officer and consequently sent the failure report under Section 12(4) of the Act to the Labour Commissioner, H.P. and thereafter matter was referred to the Labour Court-Cum-Industrial Tribunal for adjudication.

21. It is by now well settled that in case a dispute is referred to this Tribunal for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (supra). **In Divisional Manager, HPFC & another vs. Garibu Ram, LatestHLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In Ramesh Chand vs. Union of India, CWP No. 812 of 2000, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of

any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice.

22. No material has been placed on record by the respondent to hold that there was unexplained unreasonable delay on the part of the petitioner in raising the dispute initially before the Labour authorities and later before this Court. Thus in view of the aforesaid settled position of law coupled with the findings recorded by the Hon'ble High Court of H.P. in CWP No.4424 of 2012 filed by the petitioner, which was decided vide order dated 10.4.2013, the petition as filed by the petitioner cannot be held to hit by the vice of delay and laches as alleged by the respondents. Hence, this issue in hand is decided against the respondent and in favour of peititoner.

RELIEF

23. As a sequel to my findings on foregoing issues, the reference petition is allowed in part in favour of petitioner and the termination of the services of the petitioner is hereby set aside directing respondent to reinstate the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. It is further ordered that respondent shall consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. Keeping in view peculiar circumstances of case, the parties are left to bear their own cots.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room. Announced in the open Court today this 11th day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K.SHARMA
PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL,
KANGRA AT DHARAMSHALA, H.P.
(CAMP AT CHAMBA)

Ref No. : 253/2014
Date of Institution : 14.8.2014
Date of decision : 11.8.2015

Shri Narain Singh s/o Shri Bhikha Ram, r/o Village Kuwaruien, P.O. Ganed, Tehsil Churah, District Chamba, H.P. *...Petitioner*

Versus

The Deputy Director Horticulture, Horticulture Department Chamba, District Chamba, H.P.
...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Narain Singh, S/O Shri Bhikha Ram, R/O Village Kuwaruien, P.O. Ganed, Tehsil Churah, District Chamba, H.P. during year 2006 by the Deputy Director Horticulture, Horticulture Department Chamba, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim before this court.

3. Brief facts as set up in the statement of claim reveal that petitioner wasengaged as daily waged on muster roll basis with the respondent department in PCDO Killod under HDO Salooni/Kollod w.e.f. December, 1997 who worked continuously till 21.3.2006, when respondent had orally terminated his services without any reason whereas the workers junior to petitioner had continuously retained by the respondent department and their services have been regularized but the services of petitioner were terminated on 21.3.2006. It is further alleged that when the services of petitioner were illegally terminated orally on 21.3.2006 it was assured that petitioner would be engaged on contract basis and thereafter petitioner had made many requests with the officers/officials concerned of respondent/department not to change his service condition from daily wage to contract but of no avail. It is alleged that petitioner had given short term/spell of 10-15 days on contract basis in a year just to deprive the petitioner from continuity andseniority which is unfair labour practice whereas the respondent had retained junior workers continuously on muster roll basis who were consequently regularized. It is further alleged that respondent had not followed the relevant provisions of Industrial Disputes Act, 1947 (hereinafter called as 'the Act' for brevity) and had also not taken any prior approval from the appropriate government as well as written consent from petitioner and as such the respondent/department had changed the service conditions of petitioner due to which he could not complete criteria of 240 days in each calendar year depriving petitioner from benefit of regularization. It is further averred that the respondent had appointed/engaged many persons junior to the petitioner namely Devi Parshad, Jagat Ram, Man Singh, Mukesh Kumari, Punam, Shakuntla, Sushil Kumar, Kartar Chand, Devinder, Kaushalya, Sudarshan Devi and Bachan Singh who were appointed in the years 1997, 1998, 1999, 2000, 2001, 2003 and 2004 respectively who have since been regularized. It is also averred that respondent had not followed the provisions of Section 25-G of the Act while engaging the services of abovestated juniors on muster roll but changed the service condition of petitioner. It is further alleged that respondent had given spotless services to the respondent/department who had never been charge-sheeted for any act of indiscipline, negligence of work or misconduct however petitioner had worked with full devotion. It is alleged that respondent had committed gross violation of statutory provision of Sections 25-B, 25-F, 25-G and 25-H of the Act in malafide, arbitrary, unconstitutional, illegal and unjustified manner and also against the principle of natural justice which amounts to

"unfair labour practice". The petitioner thus prayed that oral orders of illegal termination/retrenchment from daily waged services from 21.3.2006 be set aside being illegal, malafide, arbitrary and unjustified and petitioner be engaged on daily waged basis because as juniors workmen engaged after him had been working continuously on daily waged basis with the respondent. It is further prayed that the petitioner be reinstated along with full back wages, seniority, continuity in service as the petitioner remained unemployed from the date of his illegal retrenchment/termination.

4. The claim filed by the petitioner was contested by the respondent by filing a reply inter-alia taking preliminary objections qua maintainability, claim of the petitioner being bad on account of delay and laches. On merits, it is contended that the petitioner was initially engaged as daily waged labourer to carryout seasonal and occasional work on December, 1997 subject to work and funds besides stated that he had not completed 240 days in any calendar year since his initial engagement was as intermittent worker for seasonal work and the petitioner had worked with the respondent as per his own convenience and sweet will. It is further stated that petitioner had worked with the respondent/department upto February 2006 and thereafter 'abandoned' the job at his own sweet will and convenience and never reported for work after 2006. It is, however, denied that the services of the petitioner had been terminated by the respondent and that the services of junior workmen had been retained by respondent continuously and thus respondent had not violated provisions of Section 25-G of the Act. It is denied that respondent has intentionally provided work to petitioner for short term/spell of 10-15 days besides he had never given assurance to petitioner to engage him on contract basis. It is also denied that respondent had changed the service condition of petitioner who hadnever completed 240 days of work in each calendar year since petitioner did not come for work with the respondent after the year 2006. It is averred that only those workers had been regularized by the respondent/department who had completed the requisite criteria for regularization as per the government policy and as such the respondent had not violated any principle of 'Last come First go'. It is stated that the services of petitioner were engaged by the respondent intermittently for seasonal work which fact had already known to petitioner and no fictional breaks were ever given to petitioner by the respondent. It is contended that no new/fresh workmen/labourers had been engaged by respondent and as such there was no violation of provisions of Section 25-G and 25-H of the Act. The respondent thus alleges claim petition to be devoid of merit which was accordingly sought to be dismissed.

5. The petitioner filed rejoinder to reply filed by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B, Ex. PW1/C, Ex. PW1/D copies of seniority lists of casual labourers, Ex. PW1/E copy of Award dated 19.5.2011 passed in Reference No.45 of 2008 by this court and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Shashi Sharma, Deputy Director, Horticulture, Chamba as RW1 who tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. RW1/B copy of mandays chart of petitioner, Ex. RW1/C copy of letter dated 6.2.2006, Ex. RW1/D copy of seniority list of labourers in respect of o/o DDH Chamba and closed evidence.

7. From the contentions raised, following issues were framed on 17.4.2015 for determination:

1. Whether termination of services of the petitioner by the respondent during the year 2006 is/was improper and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? *OPP*

3. Whether the petition is not maintainable in the present form? *OPR*
4. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? *OPR*
5. Relief.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No

Relief. : Petition is allowed per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is admitted case of the parties that the services of the petitioner were engaged by respondent on December, 1997 who worked intermittently till 21.3.2006. Be it noticed that the respondent had not placed/exhibited on record any document evidencing that the services of the petitioner used to be engaged for specific period and work to his knowledge. The case of the petitioner remains that he was engaged as beldar by the respondent on December, 1997 till 21.3.2006 on which date his services were illegally terminated and that he had completed 240 days continuously within calendar year. On the other hand, it is the plea of the respondent that the petitioner was engaged as casual labourer on December, 1997 who had not completed 240 days in any calendar year since his initial engagement as he had abandoned the job at his own sweet will and convenience in the month of February, 2006. However, there is nothing on record to establish that that the petitioner had completed 240 days in the 12 calendar months preceding his termination except bald statement of the petitioner. On the other hand, the mandays chart of the petitioner which has been placed on record as Ex. RW1/B by the respondent establish that the petitioner has factually not completed 240 days in 12 calendar months preceding his termination. The perusal of mandays chart of the petitioner Ex. RW1/B shows that he has worked only for 12 days during the year 1997, 223 days in 1998, 230 days in 1999, 231 days in 2000, 223 days in 2001, 186 days in 2002, 201 days in 2004, 233 days in 2005 and 53 days in 2006. In view of mandays chart referred to above plea of petitioner to have completed 240 days in 12 calendar months preceding his termination cannot be accepted and his retrenchment cannot be said to be in derogation of the provisions of Section 25-F of the Act.

12. It is also the plea of the petitioner that the services of Shakuntla Devi and Kaushalya Devi and others as mentioned in his affidavit have been regularized despite the fact that they were appointed after petitioner however such plea of the petitioner has been denied by the respondent. On the other hand, plea of the respondent remains that persons figuring at serial nos. 17 to 24 in the seniority list Ex. RW1/D were reengaged as per orders of the Hon'ble High Court and they were

not junior to the petitioner. It further the plea of respondent that services of workmen at serial no. 17 to 24 have been regularized as they had completed 240 days in each calendar year which was only the criteria for regularization of daily wagers.

13. The plea of the petitioner remains that his services were illegally terminated by the respondent by verbal order in the year 2006 which had been denied by respondent. On the contrary it is the plea of the respondent that the petitioner had left the job of his own accord and free volition. To support the plea of the abandonment, the respondent had examined Shri Shashi Sharma, Deputy Director, Horticulture, Chamba as RW1 who has deposed that the services of petitioner were engaged in the year 1997 who worked upto 2006. It is admitted that department had engaged petitioner on muster roll basis however denied services of petitioner were retrenched. It is admitted that neither notice nor compensation in lieu of notice was ever given to petitioner. It is admitted that no approval was taken from the government at the time of retrenchment of the service of petitioner. It is denied that department had not followed principle of 'Last come First go'. It is admitted that when respondent/department had given work to petitioner he always remained present for the work. It is denied that petitioner was not kept on seasonal work. There is nothing on record to remotely suggest that any notice was served upon the petitioner for his willful and unauthorized absence from the duty. There is also no documentary evidence on record to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Nothing except the bald statement of RW-1, the respondent in this case there is nothing to show that the petitioner had in fact abandoned the job. It is well settled preposition of law that the 'abandonment' has to be established by leading evidence and it is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled **State of H.P. vs. Bhatag Ram and Anr. (2007 Latest HLJ 903).** Absence from duty is a serious misconduct and admittedly no disciplinary proceedings was ever initiated against the petitioner by the respondent for his alleged willful absence from duty. In view of same, bald and uncorroborated statement of RW-1 cannot be relied upon qua allegation of abandonment of job by petitioner and on the basis of uncorroborated statement of RW-1, the plea of abandonment has been put forth by the respondent cannot be held to have been established and thus it cannot be held that the petitioner had not factually abandoned the job.

14. It is the plea of the petitioner that the persons junior to him namely Devi Parshad, Jagat Ram, Man Singh and others have been retained in service which is in violation of the provisions of Section 25-G of the Act. It is not disputed by the respondent that the abovestated workmen were engaged as casual labourers with the respondent who were still continuously working. This fact is also finds support from seniority list Ex. RW1/D, which establishes that workmen mentioned in serial nos. 17 to 24 were initially engaged during the years 1998, 1999 and 2000 respectively and thus they were junior to the petitioner who was admittedly engaged during June, 1997 and have been retained in service by the respondent/departmentand still continuously working with the respondents. In his cross-examination, RW1 has specifically admitted when petitioner and other workers were retrenched in the year 2006 and that some of the workers had been reengaged by the respondent/department except the petitioner and their services had been regularized. In view of foregoing, the respondent can be safely held to have violated the provisions of Section 25-G of the Act which is mandatory in nature and non compliance of the said provision vitiates retrenchment entitling petitioner for relief claimed.

15. It is by now well settled that for seeking the protection of Sections 25-G of the Act, the requirement of having completed 240 days is not a condition precedent as has been held by the Hon'ble Supreme Court in **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** and **Harjinder Singh vs. Punjab State Warehousing Corporation, AIR 2010 SC 1116**. **In HP State Electricity Board vs. Shri Charan Dass 2012(1) Him. L.R. (DB) 320**. It has come in the

evidence that respondent failed to establish that the petitioner has abandoned the job of his own free will and the respondent retained the persons junior to the petitioner in service and it was the case of the respondent itself that no person junior to the petitioner save and except those who were ordered to be reinstated by the Court, were retained in service. In such circumstances, it was held by the Hon'ble High Court of H.P. that the plea of the respondent itself reveals that the persons junior to the petitioner have been retained in service and as such the respondent has violated the provisions of Sections 25-G and 25-H of the Act and the completion of 240 days by the workman in a calendar year is not required for seeking the protection under Sections 25-G and 25-H of the Act in view of law laid down in judgments (supra).

16. Thus, in view of such settled preposition of law even if the petitioner has not completed the requisite number of days in the 12 calendar months preceding his termination, the respondent was still bound to follow the principle of 'last come first go', which has not been done in the present case while engaging junior persons. Thus, the termination of the services of the petitioner is illegal being against the mandatory provisions of Sections 25-G of the Act. Consequently, thetermination of the services of the petitioner is liable to be set aside.

17. On perusal of the statement of claim as filed by the petitioner and his statement while appearing as PW1, it is clear that the petitioner has not uttered a single word that he was not gainfully employed during the period of his retrenchment till filing of the claim. Rather he has admitted that he had cultivable land from which he could have his livelihood. In view of this, the petitioner hasfailed to discharge the initial onus that during the period of his retrenchment till filing of the claim, he was not gainfully employed. The petitioner while appearing as PW1 has stated his age as 40 years and it can be safely assumed that a youngman like the petitioner would not have sat ideally at home during the period despite the fact that he was out of the job. For these reasons, the petitioner is held notentitled to the back wages.

18. Since the termination of the services of the petitioner by the respondent has been held to be illegal being in contravention of the provisions of Section 25-G of the Act as discussed in my findings in foregoing paras, the petitioner is ordered to be reinstated forthwith who shall be also entitled to seniority and continuity inservice from the date of his illegal termination. In view of what has been stated above thus, issue no.1 is answered in affirmative and issue no.2 is answered accordingly.

ISSUE NO. 3

19. In view of my findings on issue no.1, the claim petition as filed by the petitioner can be safely held to be maintainable. There is nothing in record showing in what manner claim petition is not maintainable. Hence, the issue in hand is decided in favour of petitioner and against the respondent.

ISSUE NO. 4

20. It is the plea of the petitioner himself that his services were orally terminated by the respondent on 21.3.2006. It is further clear on the reference made to this Court that the petitioner had raised the dispute vide demand notice and on the basis of demand notice raised, conciliation proceedings were initiated by the Labour Officer-cum-Conciliation Officer, Chamba, Distt. Chamba, H.P. which took sufficient time. However, the dispute could not be settled by the Labour Officercum- Conciliation Officer and consequently sent the failure report under Section 12(4) of the Act to the Labour Commissioner, H.P. and thereafter matter wasreferred to the Labour Court-Cum-Industrial Tribunal for adjudication.

21. It is by now well settled that in case a dispute is referred to this Tribunal for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (supra). **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In Ramesh Chand vs. Union of India, CWP No. 812 of 2000, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice.

22. No material has been placed on record by the respondent to hold that there was unexplained unreasonable delay on the part of the petitioner in raising the dispute initially before the Labour authorities and later before this Court. Thus in view of the aforesaid settled position of law coupled with the findings recorded by the Hon'ble High Court of H.P. in CWP No.4424 of 2012 filed by the petitioner, which was decided vide order dated 10.4.2013, the petition as filed by the petitioner cannot be held to hit by the vice of delay and laches as alleged by the respondents. Hence, this issue in hand is decided against the respondent and in favour of peititoner.

RELIEF

23. As a sequel to my findings on foregoing issues, the reference petition is allowed in part in favour of petitioner and the termination of the services of the petitioner is hereby set aside directing respondent to reinstate the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. It is further ordered that respondent shall consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. Keeping in view peculiar circumstances of case, the parties are left to bear their own cots.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room. Announced in the open Court today this 11th day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K.SHARMA
PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL,
KANGRA AT DHARAMSHALA, H.P.
(CAMP AT CHAMBA)

Ref No. : 254/2014
Date of Institution : 14.8.2014
Date of decision : 11.8.2015

Shri Suresh Kumar s/o Shri Mela Ram, r/o V.P.O. Killod, Tehsil Salooni, District Chamba, H.P. …*Petitioner*

Versus

The Deputy Director Horticulture, Horticulture Department Chamba, District Chamba, H.P. …*Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Suresh Kumar, S/O Shri Mela Ram, R/O V.P.O. Killod, Tehsil Salooni, District Chamba, H.P. during February 2006 by the Deputy Director Horticulture, Horticulture Department Chamba, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim before this court.

3. Brief facts as set up in the statement of claim reveal that petitioner was engaged as daily waged on muster roll basis with the respondent department in PCDO Killod under HDO Salooni/Kollod w.e.f. 15.6.1997 who worked continuously till 21.3.2006, when respondent had orally terminated his services without any reason whereas the workers junior to petitioner had continuously retained by the respondent department and their services have been regularized but the services of petitioner were terminated on 21.3.2006. It is further alleged that when the services of petitioner were illegally terminated orally on 21.3.2006 it was assured that petitioner would be engaged on contract basis and thereafter petitioner had made many requests with the officers/ officials concerned of respondent/department not to change his service condition from daily wage to contract but of no avail. It is alleged that petitioner had given short term/spell of 10-15 days on contract basis in a year just to deprive the petitioner from continuity and seniority which is unfair labour practice whereas the respondent had retained junior workers continuously on muster roll basis who were consequently regularized. It is further alleged that respondent had not followed the

relevant provisions of Industrial Disputes Act, 1947 (hereinafter called as 'the Act' for brevity) and had also not taken any prior approval from the appropriate government as well as written consent from petitioner and as such the respondent/department had changed the service conditions of petitioner due to which he could not complete criteria of 240 days in each calendar year depriving petitioner from benefit of regularization. It is further averred that the respondent had appointed/engaged many persons junior to the petitioner namely Devi Parshad, Jagat Ram, Man Singh, Mukesh Kumari, Punam, Shakuntla, Sushil Kumar, Kartar Chand, Devinder, Kaushalya, Sudarshan Devi and Bachan Singh who were appointed in the years 1997, 1998, 1999, 2000, 2001, 2003 and 2004 respectively who have since been regularized. It is also averred that respondent had not followed the provisions of Section 25-G of the Act while engaging the services of abovestated juniors on muster roll but changed the service condition of petitioner. It is further alleged that respondent had given spotless services to the respondent/department who had never been charge-sheeted for any act of indiscipline, negligence of work or misconduct however petitioner had worked with full devotion. It is alleged that respondent had committed gross violation of statutory provision of Sections 25-B, 25-F, 25-G and 25-H of the Act in malafide, arbitrary, unconstitutional, illegal and unjustified manner and also against the principle of natural justice which amounts to "unfair labour practice". The petitioner thus prayed that oral orders of illegal termination/retrenchment from daily waged services from 21.3.2006 be set aside being illegal, malafide, arbitrary andunjustified and petitioner be engaged on daily waged basis because as juniors workmen engaged after him had been working continuously on daily waged basis with the respondent. It is further prayed that the petitioner be reinstated along with full back wages, seniority, continuity in service as the petitioner remained unemployed from the date of his illegal retrenchment/termination.

4. The claim filed by the petitioner was contested by the respondent by filing a reply inter-alia taking preliminary objections qua maintainability, claim of the petitioner being bad on account of delay and laches. On merits, it is contended that the petitioner was initially engaged as daily waged labourer to carryout seasonal and occasional work on 01.6.1997 subject to work and funds besides stated that he had not completed 240 days in any calendar year since his initial engagement was as intermittent worker for seasonal work and the petitioner had worked with the respondent as per his own convenience and sweet will. It is further stated that petitioner had worked with the respondent/department upto February 2006 and thereafter 'abandoned' the job at his own sweet will and convenience and never reported for work after 2006. It is, however, denied that the services of the petitioner had been terminated by the respondent and that the services of junior workmen had been retained by respondent continuously and thus respondent had not violated provisions of Section 25-G of the Act. It is denied that respondent has intentionally provided work to petitioner for short term/spell of 10-15 days besides he had never given assurance to petitioner to engage him on contract basis. It is also denied that respondent had changed the service condition of petitioner who had never completed 240 days of work in each calendar year since petitioner did not come for work with the respondent after the year 2006. It is averred that only those workers had been regularized by the respondent/department who had completed the requisite criteria for regularization as per the government policy and as such the respondent had not violated any principle of 'Last come First go'. It is stated that the services of petitioner were engaged by the respondent intermittently for seasonal work which fact had already known to petitioner and no fictional breaks were ever given to petitioner by the respondent. It is contended that no new/fresh workmen/labourers had been engaged by respondent and as such there was no violation of provisions of Section 25-G and 25-H of the Act. The respondent thus alleges claim petition to be devoid of merit which was accordingly sought to be dismissed.

5. The petitioner filed rejoinder to reply filed by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B, Ex. PW1/C, Ex. PW1/D copies of seniority lists of casual labourers, Ex. PW1/E copy of Award dated 19.5.2011 passed in Reference No.45 of 2008 by this court and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Shashi Sharma, Deputy Director, Horticulture, Chamba as RW1 who tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. RW1/B copy of mandays chart of petitioner, Ex. RW1/C copy of letter dated 6.2.2006, Ex. RW1/D copy of seniority list of labourers in respect of o/o DDH Chamba and closed evidence.

7. From the contentions raised, following issues were framed on 17.4.2015 for determination:

1. Whether termination of services of the petitioner by the respondent during the year February, 2006 is/was improper and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? *OPP*
3. Whether the petition is not maintainable in the present form? *OPR*
4. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? *OPR*
5. Relief.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No

Relief. : Petition is allowed per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is admitted case of the parties that the services of the petitioner were engaged by respondent on 15.6.1997 who worked intermittently till 21.3.2006. Be it noticed that the respondent had not placed/exhibited on record any document evidencing that the services of the petitioner used to be engaged for specific period and work to his knowledge. The case of the petitioner remains that he was engaged as beldar by the respondent on 15.6.1997 till 21.3.2006 on which date his services were illegally terminated and that he had completed 240 days continuously within calendar year. On the other hand, it is the plea of the respondent that the petitioner was engaged as casual labourer on 01.6.1997 who had not completed 240 days in any calendar year since his initial engagement as he had abandoned the job at his own sweet will and convenience in the month of February, 2006. However, there is nothing on record to establish that that the petitioner had

completed 240 days in the 12 calendar months preceding his termination except bald statement of the petitioner. On the other hand, the mandays chart of the petitioner which has been placed on record as Ex. RW1/B by the respondent establish that the petitioner has factually not completed 240 days in 12 calendar months preceding his termination. The perusal of mandays chart of the petitioner Ex. RW1/B shows that he has worked only for 26 days during the year 1997, 88 days in 1998, 117 days in 1999, 132 days in 2000, 103 days in 2001, 98 days in 2002, 84 days in 2003, 87 days in 2004, 148 days in 2005 and 41 days in 2006. In view of mandays chart referred to above plea of petitioner to have completed 240 days in 12 calendar months preceding his termination cannot be accepted and his retrenchment cannot be said to be in derogation of the provisions of Section 25-F of the Act.

12. It is also the plea of the petitioner that the services of Shakuntla Devi and Kaushalya Devi and others as mentioned in his affidavit have been regularized despite the fact that they were appointed after petitioner however such plea of the petitioner has been denied by the respondent. On the other hand, plea of the respondent remains that persons figuring at serial nos. 17 to 24 in the seniority list Ex. RW1/D were reengaged as per orders of the Hon'ble High Court and they were not junior to the petitioner. It further the plea of respondent that services of workmen at serial no. 17 to 24 have been regularized as they had completed 240 days in each calendar year which was only the criteria for regularization of daily wagers.

13. The plea of the petitioner remains that his services were illegally terminated by the respondent by verbal order in February, 2006 which had been denied by respondent. On contrary it is the plea of the respondent that the petitioner had left the job of his own accord and free volition. To support the plea of the abandonment, the respondent had examined Shri Shashi Sharma, Deputy Director, Horticulture, Chamba as RW1 who has deposed that the services of petitioner were engaged in the year 1997 who worked upto 2006. It is admitted that department had engaged petitioner on muster roll basis however denied services of petitioner were retrenched. It is admitted that neither notice nor compensation in lieu of notice was ever given to petitioner. It is admitted that no approval was taken from the government at the time of retrenchment of the service of petitioner. It is denied that department had not followed principle of 'Last come First go'. It is admitted that when respondent/department had given work to petitioner he always remained present for the work. It is denied that petitioner was not kept on seasonal work. There is nothing on record to remotely suggest that any notice was served upon the petitioner for his willful and unauthorized absence from the duty. There is also no documentary evidence on record to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Nothing except the bald statement of RW-1, the respondent in this case there is nothing to show that the petitioner had in fact abandoned the job. It is well settled preposition of law that the 'abandonment' has to be established by leading evidence and it is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled **State of H.P. vs. Bhatag Ram and Anr. (2007 Latest HLJ 903).** Absence from duty is a serious misconduct and admittedly no disciplinary proceedings was ever initiated against the petitioner by the respondent for his alleged willful absence from duty. In view of same, bald and uncorroborated statement of RW-1 cannot be relied upon qua allegation of abandonment of job by petitioner and on the basis of uncorroborated statement of RW-1, the plea of abandonment has been put forth by the respondent cannot be held to have been established and thus it cannot be held that the petitioner had not factually abandoned the job.

14. It is the plea of the petitioner that the persons junior to him namely Devi Parshad, Jagat Ram, Man Singh and others have been retained in service which is in violation of the provisions of Section 25-G of the Act. It is not disputed by the respondent that the abovestated workmen were engaged as casual labourers with the respondent who were still continuously working. This fact is

also finds support from seniority list Ex. RW1/D, which establishes that workmen mentioned in serial nos. 17 to 24 were initially engaged during the years 1998, 1999, 2000 & 2001 respectively and thus they were junior to the petitioner who was admittedly engaged during June, 1997 and have been retained in service by the respondent/department and still continuously working with the respondents. In his cross-examination, RW1 has specifically admitted when petitioner and other workers were retrenched in the year 2006 and that some of the workers had been reengaged by the respondent/department except the petitioner and their services had been regularized. In view of foregoing, the respondent can be safely held to have violated the provisions of Section 25-G of the Act which is mandatory in nature and non compliance of the said provision vitiates retrenchment entitling petitioner for relief claimed.

15. It is by now well settled that for seeking the protection of Sections 25-G of the Act, the requirement of having completed 240 days is not a condition precedent as has been held by the Hon'ble Supreme Court in **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** and **Harjinder Singh vs. Punjab State Warehousing Corporation, AIR 2010 SC 1116**. **In HP State Electricity Boardvs. Shri Charan Dass 2012(1) Him. L.R. (DB) 320**. It has come in the evidence that respondent failed to establish that the petitioner has abandoned the job of his own free will and the respondent retained the persons junior to the petitioner in service and it was the case of the respondent itself that no person junior to the petitioner save and except those who were ordered to be reinstated by the Court, were retained in service. In such circumstances, it was held by the Hon'ble High Court of H.P. that the plea of the respondent itself reveals that the persons junior to the petitioner have been retained in service and as such the respondent has violated the provisions of Sections 25-G and 25-H of the Act and the completion of 240 days by the workman in a calendar year is not required for seeking the protection under Sections 25-G and 25-H of the Act in view of law laid down in judgments (supra).

16. Thus, in view of such settled preposition of law even if the petitioner has not completed the requisite number of days in the 12 calendar months preceding his termination, the respondent was still bound to follow the principle of 'last come first go', which has not been done in the present case while engaging junior persons. Thus, the termination of the services of the petitioner is illegal being against the mandatory provisions of Sections 25-G of the Act. Consequently, the termination of the services of the petitioner is liable to be set aside.

17. On perusal of the statement of claim as filed by the petitioner and his statement while appearing as PW1, it is clear that the petitioner has not uttered a single word that he was not gainfully employed during the period of his retrenchment till filing of the claim. Rather he has admitted that he had cultivable land from which he could have his livelihood. In view of this, the petitioner has failed to discharge the initial onus that during the period of his retrenchment till filing of the claim, he was not gainfully employed. The petitioner while appearing as PW1 has stated his age as 40 years and it can be safely assumed that a young man like the petitioner would not have sat ideally at home during the period despite the fact that he was out of the job. For these reasons, the petitioner is held not entitled to the back wages.

18. Since the termination of the services of the petitioner by the respondent has been held to be illegal being in contravention of the provisions of Section 25-G of the Act as discussed in my findings in foregoing paras, the petitioner is ordered to be reinstated forthwith who shall be also entitled to seniority and continuity in service from the date of his illegal termination. In view of what has been stated above thus, issue no.1 is answered in affirmative and issue no.2 is answered accordingly.

ISSUE NO. 3

19. In view of my findings on issue no.1, the claim petition as filed by the petitioner can be safely held to be maintainable. There is nothing in record showing in what manner claim petition is not maintainable. Hence, the issue in hand is decided in favour of petitioner and against the respondent.

ISSUE NO. 4

20. It is the plea of the petitioner himself that his services were orally terminated by the respondent on 21.2.2006. It is further clear on the reference made to this Court that the petitioner had raised the dispute vide demand notice and on the basis of demand notice raised, conciliation proceedings were initiated by the Labour Officer-cum-Conciliation Officer, Chamba, Distt. Chamba, H.P. which took sufficient time. However, the dispute could not be settled by the Labour Officercum-Conciliation Officer and consequently sent the failure report under Section 12(4) of the Act to the Labour Commissioner, H.P. and thereafter matter was referred to the Labour Court-Cum-Industrial Tribunal for adjudication.

21. It is by now well settled that in case a dispute is referred to this Tribunal for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (supra). **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In Ramesh Chand vs. Union of India, CWP No. 812 of 2000, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice.

22. No material has been placed on record by the respondent to hold that there was unexplained unreasonable delay on the part of the petitioner in raising the dispute initially before the Labour authorities and later before this Court. Thus in view of the aforesaid settled position of law coupled with the findings recorded by the Hon'ble High Court of H.P. in CWP No.4424 of 2012 filed by the petitioner, which was decided vide order dated 10.4.2013, the petition as filed by the petitioner cannot be held to hit by the vice of delay and laches as alleged by the respondents. Hence, this issue in hand is decided against the respondent and in favour of peititoner.

RELIEF

23. As a sequel to my findings on foregoing issues, the reference petition is allowed in part in favour of petitioner and the termination of the services of the petitioner is hereby set aside directing respondent to reinstate the petitioner forthwith who shall be entitled to seniority and

continuity in service from the date of his illegal termination **except back wages**. It is further ordered that respondent shall consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. Keeping in view peculiar circumstances of case, the parties are left to bear their own cots.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room. Announced in the open Court today this 11th day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K.SHARMA
PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL,
KANGRA AT DHARAMSHALA, H.P.
(CAMP AT CHAMBA)

Ref No. : 252/2014
Date of Institution : 14.8.2014
Date of decision : 11.8.2015

Shri Joginder Paul s/o Shri Mela Ram, r/o V.P.O. Killod, Tehsil Salooni, District Chamba, H.P. *...Petitioner*

Versus

The Deputy Director Horticulture, Horticulture Department Chamba, District Chamba, H.P. *...Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Joginder Paul, S/O Shri Mela Ram, R/O V.P.O. Killod, Tehsil Salooni, District Chamba, H.P. during February 2006 by the Deputy

Director Horticulture, Horticulture Department Chamba, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim before this court.

3. Brief facts as set up in the statement of claim reveal that petitioner was engaged as daily waged on muster roll basis with the respondent department in PCDO Killod under HDO Salooni/Kollod w.e.f. 07.3.1998 who worked continuously till 21.3.2006, when respondent had orally terminated his services without any reason whereas the workers junior to petitioner had continuously retained by the respondent department and their services have been regularized but the services of petitioner were terminated on 21.3.2006. It is further alleged that when the services of petitioner were illegally terminated orally on 21.3.2006 it was assured that petitioner would be engaged on contract basis and thereafter petitioner had made many requests with the officers/officials concerned of respondent/department not to change his service condition from daily wage to contract but of no avail. It is alleged that petitioner had given short term/spell of 10-15 days on contract basis in a year just to deprive the petitioner from continuity and seniority which is unfair labour practice whereas the respondent had retained junior workers continuously on muster roll basis who were consequently regularized. It is further alleged that respondent had not followed the relevant provisions of Industrial Disputes Act, 1947 (hereinafter called as 'the Act' for brevity) and had also not taken any prior approval from the appropriate government as well as written consent from petitioner and as such the respondent/department had changed the service conditions of petitioner due to which he could not complete criteria of 240 days in each calendar year depriving petitioner from benefit of regularization. It is further averred that the respondent had appointed/engaged many persons junior to the petitioner namely Smt. Mukesh Kumari, Smt. Punam, Smt. Shakuntla, Sushil Kumar, Kartar Chand, Devinder, Smt. Kaushalya, Sudarshan Devi and Bachan Singh who were appointed in the years 1998, 1999, 2000, 2001, 2003 and 2004 respectively who have since been regularized. It is also averred that respondent had not followed the provisions of Section 25-G of the Act while engaging the services of abovestated juniors on muster roll but changed the service condition of petitioner. It is further alleged that respondent had given spotless services to the respondent/department who had never been charge-sheeted for any act of indiscipline, negligence of work or misconduct however petitioner had worked with full devotion. It is alleged that respondent had committed gross violation ofstatutory provision of Sections 25-B, 25-F, 25-G and 25-H of the Act in malafide, arbitrary, unconstitutional, illegal and unjustified manner and also against the principle of natural justice which amounts to "unfair labour practice". The petitioner thus prayed that oral orders of illegal termination/retrenchment from daily waged services from 21.3.2006 be set aside being illegal, malafide, arbitrary and unjustified and petitioner be engaged on daily waged basis because as juniors workmen engaged after him had been working continuously on daily waged basis with the respondent. It is further prayed that the petitioner be reinstated along with full back wages, seniority, continuity in service as the petitioner remained unemployed from the date of his illegal retrenchment/termination.

4. The claim filed by the petitioner was contested by the respondent by filing a reply inter-alia taking preliminary objections qua maintainability, claim of the petitioner being bad on account of delay and laches. On merits, it is contended that the petitioner was initially engaged as daily waged labourer to carryout seasonal and occasional work on 07.3.1998 subject to work and funds besides stated that he had not completed 240 days in any calendar year since his initial engagement was as intermittent worker for seasonal work and the petitioner had worked with the respondent as per his own convenience and sweet will. It is further stated that petitioner had

worked with the respondent/department upto February 2006 and thereafter 'abandoned' the job at his own sweet will and convenience and never reported for work after 2006. It is, however, denied that the services of the petitioner had been terminated by the respondent and that the services of junior workmen had been retained by respondent continuously and thus respondent had not violated provisions of Section 25-G of the Act. It is denied that respondent has intentionally provided work to petitioner for short term/spell of 10-15 days besides he had never given assurance to petitioner to engage him on contract basis. It is also denied that respondent had changed the service condition of petitioner who had never completed 240 days of work in each calendar year since petitioner did not come for work with the respondent after the year 2006. It is averred that only those workers had been regularized by the respondent/department who had completed the requisite criteria for regularization as per the government policy and as such the respondent had not violated any principle of 'Last come First go'. It is stated that the services of petitioner were engaged by the respondent intermittently for seasonal work which fact had already known to petitioner and no fictional breaks were ever given to petitioner by the respondent. It is contended that no new/fresh workmen/labourers had been engaged by respondent and as such there was no violation of provisions of Section 25-G and 25-H of the Act. The respondent thus alleges claim petition to be devoid of merit which was accordingly sought to be dismissed.

5. The petitioner filed rejoinder to reply filed by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B, Ex. PW1/C, Ex. PW1/D copies of seniority lists of casual labourers, Ex. PW1/E copy of Award dated 19.5.2011 passed in Reference No.45 of 2008 by this court and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Shashi Sharma, Deputy Director, Horticulture, Chamba as RW1 who tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. RW1/B copy of mandays chart of petitioner, Ex. RW1/C copy of letter dated 6.2.2006, Ex. RW1/D copy of seniority list of labourers in respect of o/o DDH Chamba and closed evidence.

7. From the contentions raised, following issues were framed on 17.4.2015 for determination:

1. Whether termination of services of the petitioner by the respondent during the year February, 2006 is/was improper and unjustified as alleged? *OPP*

2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? *OPP*
3. Whether the petition is not maintainable in the present form? *OPR*
4. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? *OPR*
5. Relief.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed

Issue No.3 : No
Issue No.4 : No

Relief. : Petition is allowed per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is admitted case of the parties that the services of the petitioner were engaged by respondent on 07.3.1998 who worked intermittently till 21.3.2006. Be it noticed that the respondent had not placed/exhibited on record any documentevidencing that the services of the petitioner used to be engaged for specific period and work to his knowledge. The case of the petitioner remains that he was engaged as beldar by the respondent on 07.3.1998 till 21.3.2006 on which date his services were illegally terminated and that he had completed 240 days continuously within calendar year. On the other hand, it is the plea of the respondent that the petitioner was engaged as casual labourer on 07.3.1998 who had not completed 240 days in any calendar year since his initial engagement as he had abandoned the job at his own sweet will and convenience in the month of February, 2006. However, there is nothing on record to establish that that the petitioner had completed 240 days in the 12 calendar months preceding his termination except bald statement of the petitioner. On the other hand, the mandays chart of the petitioner which has been placed on record as Ex. RW1/B by the respondent establish that the petitioner has factually not completed 240 days in 12 calendar months preceding his termination. The perusal of mandays chart of the petitioner Ex. RW1/B shows that he has worked only for 50 days during the year 1998, 115 days in 1999, 134 days in 2000, 102 days in 2001, 93 days in 2002, 71 days in 2003, 89 days in 2004, 164 days in 2004 and 40 days in 2006. In view of mandays chart referred to above plea of petitioner to have completed 240 days in 12 calendar months preceding his termination cannot be accepted and his retrenchment cannot be said to be in derogation of the provisions of Section 25-F of the Act.

12. It is also the plea of the petitioner that the services of Shakuntla Devi and Kaushalya Devi and others as mentioned in his affidavit have been regularized despite the fact that they were appointed after petitioner however such plea of the petitioner has been denied by the respondent. On the other hand, plea of the respondent remains that persons figuring at serial nos. 17 to 24 in the seniority list Ex. RW1/D were reengaged as per orders of the Hon'ble High Court and they were not junior to the petitioner. It further the plea of respondent that services of workmen at serial no. 17 to 24 have been regularized as they had completed 240 days in each calendar year which was only the criteria for regularization of daily wagers.

13. The plea of the petitioner remains that his services were illegally terminated by the respondent by verbal order in February, 2006 which had been denied by respondent. On the contrary it is the plea of the respondent that the petitioner had left the job of his own accord and free volition. To support the plea of the abandonment, the respondent had examined Shri Shashi Sharma, Deputy Director, Horticulture, Chamba as RW1 who has deposed that the services of petitioner were engaged in the year 1998 who worked upto 2006. It is admitted that department had engaged petitioner on muster roll basis however denied services of petitioner were retrenched. It is admitted that neither notice nor compensation in lieu of notice was ever given to petitioner. It is admitted that no approval was taken from the government at the time of retrenchment of the service of petitioner. It is denied that department had not followed principle of 'Last come First go'. It is

admitted that when respondent/department had given work to petitioner he always remained present for the work. It is denied that petitioner was not kept on seasonal work. There is nothing on record to remotely suggest that any notice was served upon the petitioner for his willful and unauthorized absence from the duty. There is also no documentary evidence on record to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Nothing except the bald statement of RW-1, the respondent in this case there is nothing to show that the petitioner had in fact abandoned the job. It is well settled preposition of law that the 'abandonment' has to be established by leading evidence and it is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled **State of H.P. vs. Bhatag Ram and Anr. (2007 Latest HLJ 903).** Absence from duty is a serious misconduct and admittedly no disciplinary proceedings was ever initiated against the petitioner by the respondent for his alleged willful absence from duty. In view of same, bald and uncorroborated statement of RW-1 cannot be relied upon qua allegation of abandonment of job by petitioner and on the basis of uncorroborated statement of RW-1, the plea of abandonment has been put forth by the respondent cannot be held to have been established and thus it cannot be held that the petitioner had not factually abandoned the job.

14. It is the plea of the petitioner that the persons junior to him namely Devi Parshad, Mukesh Kumar, Smt. Punam and others have been retained in service which is in violation of the provisions of Section 25-G of the Act. It is not disputed by the respondent that the abovestated workmen were engaged as casual labourers with the respondent who were still continuously working. This fact is also finds support from seniority list Ex. RW1/D, which establishes that workmen mentioned in serial nos. 17 to 24 were initially engaged during the years 1998, 1999, 2000 & 2001 respectively and thus they were junior to the petitioner who was admittedly engaged during March, 1998 and have been retained in service by the respondent/department and still continuously working with the respondents. In his cross-examination, RW1 has specifically admitted when petitioner and other workers were retrenched in the year 2006 and that some of the workers had been reengaged by the respondent/department except the petitioner and their services had been regularized. In view of foregoing, the respondent can be safely held to have violated the provisions of Section 25-G of the Act which is mandatory in nature and non-compliance of the said provision vitiates retrenchment entitling petitioner for relief claimed.

15. It is by now well settled that for seeking the protection of Sections 25-G of the Act, the requirement of having completed 240 days is not a condition precedent as has been held by the Hon'ble Supreme Court in **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** and **Harjinder Singh vs. Punjab State Warehousing Corporation, AIR 2010 SC 1116**. **In HP State Electricity Board vs. Shri Charan Dass 2012(1) Him. L.R. (DB) 320**. It has come in the evidence that respondent failed to establish that the petitioner has abandoned the job of his own free will and the respondent retained the persons junior to the petitioner in service and it was the case of the respondent itself that no person junior to the petitioner save and except those who were ordered to be reinstated by the Court, were retained in service. In such circumstances, it was held by the Hon'ble High Court of H.P. that the plea of the respondent itself reveals that the persons junior to the petitioner have been retained in service and as such the respondent has violated the provisions of Sections 25-G and 25-H of the Act and the completion of 240 days by the workman in a calendar year is not required for seeking the protection under Sections 25-G and 25-H of the Act in view of law laid down in judgments (supra).

16. Thus, in view of such settled preposition of law even if the petitioner has not completed the requisite number of days in the 12 calendar months preceding his termination, the respondent was still bound to follow the principle of 'last come first go', which has not been done in the present case while engaging junior persons. Thus, the termination of the services of the

petitioner is illegal being against the mandatory provisions of Sections 25-G of the Act. Consequently, the termination of the services of the petitioner is liable to be set aside.

17. On perusal of the statement of claim as filed by the petitioner and his statement while appearing as PW1, it is clear that the petitioner has not uttered a single word that he was not gainfully employed during the period of his retrenchment till filing of the claim. Rather he has admitted that he had cultivable land from which he could have his livelihood. In view of this, the petitioner has failed to discharge the initial onus that during the period of his retrenchment till filing of the claim, he was not gainfully employed. The petitioner while appearing as PW1 has stated his age as 40 years and it can be safely assumed that a young man like the petitioner would not have sat ideally at home during the period despite the fact that he was out of the job. For these reasons, the petitioner is held not entitled to the back wages.

18. Since the termination of the services of the petitioner by the respondent has been held to be illegal being in contravention of the provisions of Section 25-G of the Act as discussed in my findings in foregoing paras, the petitioner is ordered to be reinstated forthwith who shall be also entitled to seniority and continuity in service from the date of his illegal termination. In view of what has been statedabove thus, issue no.1 is answered in affirmative and issue no.2 is answered accordingly.

ISSUE NO. 3

19. In view of my findings on issue no.1, the claim petition as filed by the petitioner can be safely held to be maintainable. There is nothing in record showing in what manner claim petition is not maintainable. Hence, the issue in hand is decided in favour of petitioner and against the respondent.

ISSUE NO. 4

20. It is the plea of the petitioner himself that his services were orally terminated by the respondent on 21.2.2006. It is further clear on the reference made to this Court that the petitioner had raised the dispute vide demand notice and on thebasis of demand notice raised, conciliation proceedings were initiated by the Labour Officer-cum-Conciliation Officer, Chamba, Distt. Chamba, H.P. which took sufficient time. However, the dispute could not be settled by the Labour Officercum-Conciliation Officer and consequently sent the failure report under Section 12(4) of the Act to the Labour Commissioner, H.P. and thereafter matter was referred to the Labour Court-Cum-Industrial Tribunal for adjudication.

21. It is by now well settled that in case a dispute is referred to this Tribunal for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (supra). **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In Ramesh Chand vs. Union of India, CWP No. 812 of 2000, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim

on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice.

22. No material has been placed on record by the respondent to hold that there was unexplained unreasonable delay on the part of the petitioner in raising the dispute initially before the Labour authorities and later before this Court. Thus in view of the aforesaid settled position of law coupled with the findings recorded by the Hon'ble High Court of H.P. in CWP No.4424 of 2012 filed by the petitioner, which was decided vide order dated 10.4.2013, the petition as filed by the petitioner cannot be held to hit by the vice of delay and laches as alleged by the respondents. Hence, this issue in hand is decided against the respondent and in favour of peititoner.

RELIEF

23. As a sequel to my findings on foregoing issues, the reference petition is allowed in part in favour of petitioner and the termination of the services of the petitioner is hereby set aside directing respondent to reinstate the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. It is further ordered that respondent shall consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. Keeping in view peculiar circumstances of case, the parties are left to bear their own cots.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room. Announced in the open Court today this 11th day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K.SHARMA
PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL,
KANGRA AT DHARAMSHALA, H.P.
(CAMP AT CHAMBA)

Ref No. : 251/2014
Date of Institution : 14.8.2014
Date of decision : 11.8.2015

Shri Ghinder Dutt s/o Shri Govind Ram, r/o V.P.O. Killod, Tehsil Salooni, District Chamba, H.P. *...Petitioner*

Versus

The Deputy Director Horticulture, Horticulture Department Chamba, District Chamba, H.P. *...Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.
For the Petitioner : Sh. I.S. Jaryal, AR
For the Respondent : Sh. Sanjeev Singh Rana, Ld. Dy.D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Ghinder Dutt, S/O Shri Govind Ram, R/O V.P.O. Killod, Tehsil Salooni, District Chamba, H.P. during February 2006 by the Deputy Director Horticulture, Horticulture Department Chamba, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim before this court.

3. Brief facts as set up in the statement of claim reveal that petitioner was engaged as daily waged on muster roll basis with the respondent department in PCDO Killod under HDO Salooni/Kollod w.e.f. 15.6.1997 who worked continuously till 21.3.2006, when respondent had orally terminated his serviceswithout any reason whereas the workers junior to petitioner had continuously retained by the respondent department and their services have been regularized but the services of petitioner were terminated on 21.3.2006. It is further alleged that when the services of petitioner were illegally terminated orally on 21.3.2006 it was assured that petitioner would be engaged on contract basis and thereafter petitioner had made many requests with the officers/officials concerned of respondent/department not to change his service condition from daily wage to contract but of no avail. It is alleged that petitioner had given short term/spell of 10-15 days on contract basis in a year just to deprive the petitioner from continuity and seniority which is unfair labour practice whereas the respondent had retained junior workers continuously on muster roll basis who were consequently regularized. It is further alleged that respondent had not followed the relevant provisions of Industrial Disputes Act, 1947 (hereinafter called as 'the Act' for brevity) and had also not taken any prior approval from the appropriate government as well as written consent from petitioner and as such the respondent/department had changed the service conditions of petitioner due to which he could not complete criteria of 240 days in each calendar year depriving petitioner from benefit of regularization. It is further averred that the respondent had appointed/engaged many persons junior to the petitioner namely Devi Parshad, Jagat Ram, Man Singh, Mukesh Kumari, Punam, Shakuntla, Sushil Kumar, Kartar Chand, Devinder, Kaushalya, Sudarshan Devi and Bachan Singh who were appointed in the years 1997, 1998, 1999, 2000, 2001, 2003 and 2004 respectively who have since been regularized. It is also averred that respondent had not followed the provisions of Section 25-G of the Act while engaging the services of abovestated juniors on muster roll but changed the service condition of petitioner. It is further alleged that

respondent had given spotless services to the respondent/department who had never been charge-sheeted for any act of indiscipline, negligence of work or misconduct however petitioner had worked with full devotion. It is alleged that respondent had committed gross violation of statutory provision of Sections 25-B, 25-F, 25-G and 25-H of the Act in malafide, arbitrary, unconstitutional, illegal and unjustified manner and also against the principle of natural justice which amounts to "unfair labour practice". The petitioner thus prayed that oral orders of illegal termination/retrenchment from daily waged services from 21.3.2006 be set aside being illegal, malafide, arbitrary and unjustified and petitioner be engaged on daily waged basis because as juniors workmen engaged after him had been working continuously on daily waged basis with the respondent. It is further prayed that the petitioner be reinstated along with full back wages, seniority, continuity in service as the petitioner remained unemployed from the date of his illegal retrenchment/termination.

4. The claim filed by the petitioner was contested by the respondent by filing a reply inter-alia taking preliminary objections qua maintainability, claim of the petitioner being bad on account of delay and laches. On merits, it is contendedthat the petitioner was initially engaged as daily waged labourer to carryout seasonal and occasional work on 01.6.1997 subject to work and funds besides stated that he had not completed 240 days in any calendar year since his initial engagement was as intermittent worker for seasonal work and the petitioner had worked with the respondent as per his own convenience and sweet will. It is further stated that petitioner had worked with the respondent/department upto February 2006 and thereafter 'abandoned' the job at his own sweet will and convenience and never reported for work after 2006. It is, however, denied that the services of the petitioner had been terminated by the respondent and that the services of junior workmen had been retained by respondent continuously and thus respondent had not violated provisions of Section 25-G of the Act. It is denied that respondent has intentionally provided work to petitioner for short term/spell of 10-15 days besides he had never given assurance to petitioner to engage him on contract basis. It is also denied that respondent had changed the service condition of petitioner who had never completed 240 days of work in each calendar year since petitioner did not come for work with the respondent after the year 2006. It is averred that only those workers had been regularized by the respondent/department who had completed the requisite criteria for regularization as per the government policy and as such the respondent had not violated any principle of 'Last come First go'. It is stated that the services of petitioner were engaged by the respondent intermittently for seasonal work which fact had already known to petitioner and no fictional breaks were ever given to petitioner by the respondent. It is contended that no new/fresh workmen/labourers had been engaged by respondent and as such there was no violation of provisions of Section 25-G and 25-H of the Act. The respondent thus alleges claim petition to be devoid of merit which was accordingly sought to be dismissed.

5. The petitioner filed rejoinder to reply filed by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B, Ex. PW1/C, Ex. PW1/D copies of seniority lists of casual labourers, Ex. PW1/E copy of Award dated 19.5.2011 passed in Reference No.45 of 2008 by this court and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Shashi Sharma, Deputy Director, Horticulture, Chamba as RW1 who tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. RW1/B copy of mandays chart of petitioner, Ex. RW1/C copy of letter dated 6.2.2006, Ex. RW1/D copy of seniority list of labourers in respect of o/o DDH Chamba and closed evidence.

7. From the contentions raised, following issues were framed on 17.4.2015 for determination:

1. Whether termination of services of the petitioner by the respondent during the year February, 2006 is/was improper and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? *OPP*
3. Whether the petition is not maintainable in the present form? *OPR*
4. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? *OPR*
5. Relief.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No

Relief. : Petition is allowed per operative part of the award.

REASONS FOR FINDINGS

ISSUES No. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. It is admitted case of the parties that the services of the petitioner were engaged by respondent on 15.6.1997 who worked intermittently till 21.3.2006. Be it noticed that the respondent had not placed/exhibited on record any document evidencing that the services of the petitioner used to be engaged for specific period and work to his knowledge. The case of the petitioner remains that he was engaged as beldar by the respondent on 15.6.1997 till 21.3.2006 on which date his services were illegally terminated and that he had completed 240 days continuously within calendar year. On the other hand, it is the plea of the respondent that the petitioner was engaged as casual labourer on 01.6.1997 who had not completed 240 days in any calendar year since his initial engagement as he had abandoned the job at his own sweet will and convenience in the month of February, 2006. However, there is nothing on record to establish that that the petitioner had completed 240 days in the 12 calendar months preceding his termination except bald statement of the petitioner. On the other hand, the mandays chart of the petitioner which has been placed on record as Ex. RW1/B by the respondent establish that the petitioner has factually not completed 240 days in 12 calendar months preceding his termination. The perusal of mandays chart of the petitioner Ex. RW1/B shows that he has worked only for 107 days during the year 1997, 151 days in 1998, 136 days in 1999, 92 days in 2000, 105 days in 2001, 88 days in 2002, 71 days in 2003, 147 days in 2004, 137 days in 2005 and 38 days in 2006. In view of mandays chart referred to above plea of petitioner to have completed 240 days in 12 calendar months preceding his termination cannot be accepted and his retrenchment cannot be said to be in derogation of the provisions of Section 25-F of the Act.

12. It is also the plea of the petitioner that the services of Shakuntla Devi and Kaushalya Devi and others as mentioned in his affidavit have been regularized despite the fact that they were appointed after petitioner however such plea of the petitioner has been denied by the respondent. On the other hand, plea of the respondent remains that persons figuring at serial nos. 17 to 24 in the seniority list Ex. RW1/D were reengaged as per orders of the Hon'ble High Court and they were not junior to the petitioner. It further the plea of respondent that services of workmen at serial no. 17 to 24 have been regularized as they had completed 240 days in each calendar year which was only the criteria for regularization of daily wagers.

13. The plea of the petitioner remains that his services were illegally terminated by the respondent by verbal order in February, 2006 which had been denied by respondent. On the contrary it is the plea of the respondent that the petitioner had left the job of his own accord and free volition. To support the plea of the abandonment, the respondent had examined Shri Shashi Sharma, Deputy Director, Horticulture, Chamba as RW1 who has deposed that the services of petitioner were engaged in the year 1997 who worked upto 2006. It is admitted that department had engaged petitioner on muster roll basis however denied services of petitioner were retrenched. It is admitted that neither notice nor compensation in lieu of notice was ever given to petitioner. It is admitted that no approval was taken from the government at the time of retrenchment of the service of petitioner. It is denied that department had not followed principle of 'Last come First go'. It is admitted that when respondent/department had given work to petitioner he always remained present for the work. It is denied that petitioner was not kept on seasonal work. There is nothing on record to remotely suggest that any notice was served upon the petitioner for his willful and unauthorized absence from the duty. There is also no documentary evidence on record to show that some correspondence worth the name in this behalf had been addressed to the petitioner. Nothing except the bald statement of RW-1, the respondent in this case there is nothing to show that the petitioner had in fact abandoned the job. It is well settled preposition of law that the 'abandonment' has to be established by leading evidence and it is a question of fact which has to be determined in the light of surrounding circumstances of each case, as has been held by our own Hon'ble High Court in a case titled **State of H.P. vs. Bhatag Ram and Anr. (2007 Latest HLJ 903).** Absence from duty is a serious misconduct and admittedly no disciplinary proceedings was ever initiated against the petitioner by the respondent for his alleged willful absence from duty. In view of same, bald and uncorroborated statement of RW-1 cannot be relied upon qua allegation of abandonment of job by petitioner and on the basis of uncorroborated statement of RW1, the plea of abandonment has been put forth by the respondent cannot be held to have been established and thus it cannot be held that the petitioner had not factually abandoned the job.

14. It is the plea of the petitioner that the persons junior to him namely Devi Parshad, Jagat Ram, Man Singh and others have been retained in service which is in violation of the provisions of Section 25-G of the Act. It is not disputed by the respondent that the abovestated workmen were engaged as casual labourers with the respondent who were still continuously working. This fact is also finds support from seniority list Ex. RW1/D, which establishes that workmen mentioned in serial nos. 17 to 24 were initially engaged during the years 1998, 1999, 2000 & 2001 respectively and thus they were junior to the petitioner who was admittedly engaged during June, 1997 and have been retained in service by the respondent/department and still continuously working with the respondents. In his cross-examination, RW1 has specifically admitted when petitioner and otherworkers were retrenched in the year 2006 and that some of the workers had been reengaged by the respondent/department except the petitioner and their services had been regularized. In view of foregoing, the respondent can be safely held to have violated the provisions of Section 25-G of the Act which is mandatory in nature and non-compliance of the said provision vitiates retrenchment entitling petitioner for relief claimed.

15. It is by now well settled that for seeking the protection of Sections 25-G of the Act, the requirement of having completed 240 days is not a condition precedent as has been held by the Hon'ble Supreme Court in **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419** and **Harjinder Singh vs. Punjab State Warehousing Corporation, AIR 2010 SC 1116**. **In HP State Electricity Board vs. Shri Charan Dass 2012(1) Him. L.R. (DB) 320**. It has come in the evidence that respondent failed to establish that the petitioner has abandoned the job of his own free will and the respondent retained the persons junior to the petitioner in service and it was the case of the respondent itself that no person junior to the petitioner save and except those who were ordered to be reinstated by the Court, were retained in service. In such circumstances, it was held by the Hon'ble High Court of H.P. that the plea of the respondent itself reveals that the persons junior to the petitioner have been retained in service and as such the respondent has violated the provisions of Sections 25-G and 25-H of the Act and the completion of 240 days by the workman in a calendar year is not required for seeking the protection under Sections 25-G and 25-H of the Act in view of law laid down in judgments (supra).

16. Thus, in view of such settled preposition of law even if the petitioner has not completed the requisite number of days in the 12 calendar months precedinghis termination, the respondent was still bound to follow the principle of 'last come first go', which has not been done in the present case while engaging junior persons. Thus, the termination of the services of the petitioner is illegal being against the mandatory provisions of Sections 25-G of the Act. Consequently, the termination of the services of the petitioner is liable to be set aside.

17. On perusal of the statement of claim as filed by the petitioner and his statement while appearing as PW1, it is clear that the petitioner has not uttered a single word that he was not gainfully employed during the period of his retrenchment till filing of the claim. Rather he has admitted that he had cultivable land from which he could have his livelihood. In view of this, the petitioner has failed to discharge the initial onus that during the period of his retrenchment till filing of the claim, he was not gainfully employed. The petitioner while appearing as PW1 has stated his age as 40 years and it can be safely assumed that a young man like the petitioner would not have sat ideally at home during the period despite the fact that he was out of the job. For these reasons, the petitioner is held not entitled to the back wages.

18. Since the termination of the services of the petitioner by the respondent has been held to be illegal being in contravention of the provisions of Section 25-G of the Act as discussed in my findings in foregoing paras, the petitioner is ordered to be reinstated forthwith who shall be also entitled to seniority and continuity in service from the date of his illegal termination. In view of what has been stated above thus, issue no.1 is answered in affirmative and issue no.2 is answered accordingly.

ISSUE NO. 3

19. In view of my findings on issue no.1, the claim petition as filed by the petitioner can be safely held to be maintainable. There is nothing in record showing in what manner claim petition is not maintainable. Hence, the issue in hand is decided in favour of petitioner and against the respondent.

ISSUE NO. 4

20. It is the plea of the petitioner himself that his services were orally terminated by the respondent on 21.2.2006. It is further clear on the reference made to this Court that the petitioner had raised the dispute vide demand notice and on the basis of demand notice raised, conciliation

proceedings were initiated by the Labour Officer-cum-Conciliation Officer, Chamba, Distt. Chamba, H.P. which took sufficient time. However, the dispute could not be settled by the Labour Officercum-Conciliation Officer and consequently sent the failure report under Section 12(4) of the Act to the Labour Commissioner, H.P. and thereafter matter was referred to the Labour Court-Cum-Industrial Tribunal for adjudication.

21. It is by now well settled that in case a dispute is referred to this Tribunal for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (supra). **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In Ramesh Chand vs. Union of India, CWP No. 812 of 2000, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice.

22. No material has been placed on record by the respondent to hold that there was unexplained unreasonable delay on the part of the petitioner in raising the dispute initially before the Labour authorities and later before this Court. Thus in view of the aforesaid settled position of law coupled with the findings recorded by the Hon'ble High Court of H.P. in CWP No.4424 of 2012 filed by the petitioner, which was decided vide order dated 10.4.2013, the petition as filed by the petitioner cannot be held to hit by the vice of delay and laches as alleged by the respondents. Hence, this issue in hand is decided against the respondent and in favour of peititoner.

RELIEF

23. As a sequel to my findings on foregoing issues, the reference petition is allowed in part in favour of petitioner and the termination of the services of the petitioner is hereby set aside directing respondent to reinstate the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. It is further ordered that respondent shall consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. Keeping in view peculiar circumstances of case, the parties are left to bear their own cots.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File, after due completion be consigned to the Record Room. Announced in the open Court today this 11th day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUMINDUSTRIAL
TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. : 288/2014

Smt. Raj Kumari w/o Shri Jai Ram, r/o Village Basalan, P.O. Karsal, Tehsil Joginder Nagar, District Mandi, H.P. *...Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D. Joginder Nagar, District Mandi, H.P. *...Respondent.*

14-08-2015 Present : Miss Sumita Rani, adv. csl. for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A.for the respondent.

No PW is present. Heard. Ld. csl. for the petitioner has made statement that she does not want to proceed with this present reference and has prayed its dismissal. Statement recorded and placed on file. Accordingly, present reference is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

5. The file, after completion be consigned to the records.

Announced:
14.08.2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUMINDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. : 308/2014

Smt. Man Kumari w/o Sh. Rajmal, r/o Village Silah, P.O. Khaddar, Tehsil Joginder Nagar, District Mandi, H.P. *...Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D. Joginder Nagar, District Mandi, H.P. *....Respondent.*

14-08-2015 Present : Miss Sumita Rani, adv. csl. for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A.for the respondent.

No PW is present. Heard. Ld. csl. for the petitioner has made statement that she does not want to proceed with this present reference and has prayed its dismissal. Statement recorded and placed on file. Accordingly, present reference is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.
5. The file, after completion be consigned to the records.

Announced : 14.08.2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P

IN THE COURT OF K.K. SHARMA,
PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL,
KANGRA AT DHARAMSHALA (HP)

Ref No. : 304/2014
Date of Institution : 26.9.2014
Date of decision : 17.08.2015

Smt. Maina Devi w/o Shri Bhagat Ram, r/o Village Matha Thana, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. *...Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H. P.
....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether time to time termination of the services of Smt. Maina Devi, W/O Shri Bhagat Ram, R/O Village Matha Thana, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. during March, 1998 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed her statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 29.10.1998 in its National Highway Division, Joginder Nagar and later she (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but she was given fictional breaks from time to time from her initial engagement till 31.8.2007. It is alleged that she was issued muster rolls for 15 days in a month, though the work was available for the entire month but, her juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving her the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from March, 1999 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement andavailability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of

action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 13.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year March, 1999 to 31.8.2007 is/was illegal and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? *OPR*
5. Whether the petition is bad on account of delay and laches on the part of the applicant as alleged. *OPR*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. March, 1999 is not in dispute. It is the admitted case of petitioner that she had

worked since March, 1999 but she had been deliberately given fictional breaks by respondent so that she could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own use to not come on her duty besides she willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from her duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of her own and worked at her whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to her and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 105 days, 17 days in 2000, 170 days in 2001, 171 days in 2002, 168 days in 2003, 168 days in 2004, 169 days in 2005, 164 days in 2006, 225 days in 2007, 360 days in 2008, 354 days in 2009, 360 days in 2010, 356 days in 2011, 347 days in 2012 and 353 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years she had worked for more than 240 days. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1999, 2000, 2002, 2003 and 2004 except at serial no. 6 who had joined earlier to petitioner whereas petitioner had joined in 1999. Since respondent had not disputed to have engaged petitioner in March, 1999, she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that she had agricultural land and remained employed and as such it could not be stated that certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In cross examination, petitioner has admitted that she has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 6. she has admitted that working of 240 days is to be established by

petitioner to claim benefit of deemed service under Section 25-B of the Act. she has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but she could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. Since absence from duty is serous misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of her legitimate right to seek seniority as well as continuity in service form her date of joining alongwith other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1999 to 2007 was certainly illegal and unjustified which manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in crossexamination that petitioner was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1999 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, she come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner.

Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute isreferred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioner is held to be in continuous uninterrupted service with the respondent from the date of her initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room. Announced in the open Court today this 17th day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA,
PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL,
KANGRA AT DHARAMSHALA (HP)

Ref No. : 43/2015
Date of Institution : 21.2.2015
Date of decision : 17.08.2015

Shri Sanjay Kumar s/o Shri Ram Singh, r/o Village Matha Thana, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. *...Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H. P. *....Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether time to time termination of the services of Shri Sanjay Kumar, S/O Shri Ram Singh, R/O Village Matha Thana, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. during October, 1998 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 01.10.1998 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from October, 1998 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representingpetitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 05.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years October, 1998 to 31.8.2007 is/was illegal and unjustified as alleged? *OPP*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? *OPR*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. 01.10.1998 is not in dispute. It is the admitted case of petitioner that he had worked since October, 1998 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 1998 petitioner had worked for 78 days, 176 days in 1999, 82 days in 2000, 155 days in 2001, 154 days in 2002, 161 days in 2003, 128 days in 2004, 103 days in 2005, 145 days in 2006, 210 days in 2007, 317 days in 2008, 301 days in 2009, 323 days in 2010, 315 days in 2011, 336 days in 2012 and 290 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Thus, break in service

being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1999, 2002, 2003 and 2004 except at serial no. 6 who had joined earlier to petitioner whereas petitioner had joined in 1998. Since respondent had not disputed to have engaged petitioner in October, 1998, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated that certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1998 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In crossexamination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 1998 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 6. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1998 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 1998 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serous misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 1998 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service form his date of joining alongwith other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1998 to 2007 was certainly illegal and unjustified which manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in crossexamination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1998 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh**

vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room. Announced in the open Court today this 17th day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA,
PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL,
KANGRA AT DHARAMSHALA (HP)

Ref No. : 29/2015
Date of Institution : 13.1.2015
Date of decision : 17.08.2015

Shri Jagdish Chand s/o Shri Khajana Ram, r/o Village Kathon, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. …*Petitioner*

Versus

The Executive Engineer, B & R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H. P.
....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether time to time termination of the services of Shri Jagdish Chand, S/O Shri Khajana Ram, R/O Village Kathon, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. during September, 1998 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 25.9.1998 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from October, 1998 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of

the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 05.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years September, 1998 to 31.8.2007 is/was illegal and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? *OPR*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. 25.10.1998 is not in dispute. It is the admitted case of petitioner that he had worked since September, 1998 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 1998 petitioner had worked for 72 days, 184 days in 1999, 215 days in 2000, 189 days in 2001, 173 days in 2002, 173 days in 2003, 168 days in 2004, 170 days in 2005, 161 days in 2006, 196 days in 2007, 348 days in 2008, 359 days in 2009, 357 days in 2010, 344 days in 2011, 296 days in 2012 and 353 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1999, 2002, 2003 and 2004 except at serial no. 6 who had joined earlier to petitioner whereas petitioner had joined in 1998. Since respondent had not disputed to have engaged petitioner in October, 1998, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated that certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1998 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In crossexamination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 1998 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers

who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 6. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1998 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 1998 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serous misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 1998 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service form his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1998 to 2007 was certainly illegal and unjustified which manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in crossexamination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1998 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not

materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy

governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room. Announced in the open Court today this 17th day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA,
PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL,
KANGRA AT DHARAMSHALA (HP)

Ref No. : 42/2015
Date of Institution : 21.2.2015
Date of decision : 17.08.2015

Shri Chharandu Ram (Charudu Ram), s/o Shri Changu Ram, r/o VPO Khaddar, Tehsil Joginder Nagar, District Mandi, H.P. …*Petitioner*

Versus

The Executive Engineer, B & R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. ....*Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether time to time termination of the services of Shri Chharandu Ram (Charudu Ram), S/O Shri Changu Ram, R/O V.P.O. Khaddar, Tehsil Joginder Nagar, District Mandi, H.P. during January, 2001 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 7.1.2001 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from October, 2001 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 05.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years January, 2001 to 31.8.2007 is/was illegal and unjustified as alleged? *OPP*

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? *OPR*
6. Relief

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. October, 2001 is not in dispute. It is the admitted case of petitioner that he had worked since January, 2001 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 2001 petitioner had worked for 41 days, 97 days in 2002, 12 days in 2003, 165 days in 2004, 168 days in 2005, 153 days in 2006, 229 days in 2007, 356 days in 2008, 361 days in 2009, 361 days in 2010, 359 days in 2011, 349 days in 2012 and 354 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than

240 days. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2002, 2003 and 2004 except at serial nos. 3,6,7 & 10 who had joined earlier to petitioner whereas petitioner had joined in 2001. Since respondent had not disputed to have engaged petitioner in October, 2001, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated that certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 2001 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In crossexamination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 2001 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial nos. 3,6,7 & 10. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2001 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 2001 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serous misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 2001 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service form his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 2001 to 2007 was certainly illegal and unjustified which manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of

seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in crossexamination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2001 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materializeand consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. ondelay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of

their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that thepetitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room. Announced in the open Court today this 17th day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA,
PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL,
KANGRA AT DHARAMSHALA (HP)

Ref No. : 38/2015
Date of Institution : 21.2.2015
Date of decision : 17.08.2015

Shri Lachman Singh s/o Shri Chet Ram, r/o Village Bhanoh, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. ...*Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. ....*Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether time to time termination of the services of Shri Lachman Singh, S/O Shri Chet Ram, R/O Village Bhanoh, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. during year, 1999 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 11.11.1998 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as

General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from October, 1998 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 05.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years October, 1999 to 31.8.2007 is/was illegal and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged ? *OPR*
5. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? *OPR*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. October, 1998 is not in dispute. It is the admitted case of petitioner that he had worked since October, 1998 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 1998 petitioner had worked for 78 days, 180 days in 1999, 212 days in 2000, 165 days in 2001, 101 days in 2002, 12 days in 2003, 158 days in 2004, 122 days in 2005, 125 days in 2006, 205 days in 2007, 348 days in 2008, 341 days in 2009, 238 days in 2010, 347 days in 2011, 338 days in 2012 and 353 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1999, 2002, 2003 and 2004 except at serial no. 6 who had joined earlier to petitioner whereas petitioner had joined in 1998. Since respondent had not disputed to have engaged petitioner in October, 1998, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of

regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated that certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1998 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In crossexamination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 1998 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 6. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1998 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serous misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service form his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1999 to 2007 was certainly illegal and unjustified which manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party

to be impleaded in this case in claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in crossexamination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1999 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot

be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room. Announced in the open Court today this 17th day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA,
PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL,
KANGRA AT DHARAMSHALA (HP)

Ref No. : 39/2015
Date of Institution : 21.2.2015
Date of decision : 17.08.2015

Shri Dinesh Kumar s/o Shri Phinka Ram, r/o Village Draman, P.O. Goluwan, Tehsil Joginder Nagar, District Mandi, H.P. *...Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H. P. *....Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether time to time termination of the services of Shri Dinesh Kumar, S/O Shri Phinka Ram, R/O Village Draman, P.O. Goluwan, Tehsil Joginder Nagar, District Mandi, H.P. during May, 2001 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 01.5.2001 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia takenpreliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from June 2001 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 05.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years May, 2001 to 31.8.2007 is/was illegal and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? OPP
3. Whethe the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? *OPR*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. June, 2001 is not in dispute. It is the admitted case of petitioner that he had worked since June, 2001 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 2001 petitioner had worked for 101 days, 180 days in 2002, 170 days in 2003, 170 days in 2004, 171 days in 2005, 168 days in 2006, 232 days in 2007, 366 days in 2008, 361 days in 2009, 332 days in 2010, 363 days in 2011, 364 days in 2012 and 365 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2002, 2003 and 2004 except at serial nos. 3,6,7 & 10 who had joined earlier to petitioner whereas petitioner had joined in 2001. Since respondent had not disputed to have engaged petitioner in June, 2001, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in crossexamination that he had agricultural land and remained employed and as such it could not be stated that certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 2001 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In crossexamination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 2001 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial nos. 3, 6, 7 & 10. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2001 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 2001 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own

from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serous misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 2001 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service form his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 2001 to 2007 was certainly illegal and unjustified which manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in crossexamination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2001 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**.

In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room. Announced in the open Court today this 17th day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA,
PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA
AT DHARAMSHALA (HP)

Ref No. : 328/2014
Date of Institution : 25.10.2014
Date of decision : 21.08.2015

Smt. Savitri Devi w/o Shri Mahak Chand (Himal Chand), r/o Village Pagher, P.O. Bhararu, Tehsil Joginder Nagar, District Mandi, H.P. …*Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H. P. ....*Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether time to time termination of the services of Smt. Savitri Devi, W/O Shri Mahak Chand (Himal Chand), R/O Village Paher, P.O. Bhararu, Tehsil Joginder Nagar, District Mandi, H.P. during February, 2001 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner had filed statement of claim before this court.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. February, 2001 who

worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in her name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, her services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 2001 to 30.09.2007. Not only this, the persons who were working with her (petitioner) or joined the service after her were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior topetitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to her contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2008 and 10 years of continuous service on 31.12.2010 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay andlaches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from March, 2001 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of her (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with her verbal requests from time to time, she was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per her convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been

violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Anil Sangrai the then Executive Engineer, HPPWD (NH) Division Joginder Nagar and additional charge of B&R Division as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 02.4.2015 for determination:

1. Whether time to time termination of the services of the petitioner by the respondent during the years February, 2001 to 31st August, 2007 is/was improper and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged ? *OPR*
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? *OPR*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion beinginterconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. February, 2001 is not in dispute. It is the admitted case of petitioner that petitioner had worked since February, 2001 but she had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own, used to not come on her duty besides she willfully absented several times from her duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from her duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties. Rather, it is projected to be case as if petitioner came of her own for work and left the work of her own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to her and that several persons junior to her namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 2001 petitioner had worked for 148 days, 167 days in 2002, 175 days in 2003, 168 days in 2004, 160 days in 2005, 167 days in 2006, 219 days in 2007, 357 days in 2008, 359 days in 2009, 359 days in 2010, 363 days in 2011, 360 days in 2012, 365 days in 2013, and 210 days in 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years she had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 2001 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2002 and 2003 except at serial nos. 1 to 5 who had joined earlier to petitioner as workmen at serial nos.6 to 9 & 11 joined in the years October, 2001, December, 2001, 2002, and 2003 whereas petitioner had joined in February, 2001. Since respondent had not disputed to have engaged petitioner in February, 2001, she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined alongwith her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement and thus fictional breaks in no manner would affect or eclipse her legitimate right of regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 2001 to 2007 by giving fictional break whereas the persons junior to her have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In

cross-examination, she has admitted that she has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 2001 to 2007 as stated in the affidavit. RW1 Shri Anil Sangrai has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. she has admitted that working of 240 days is to be established by petitioner to claim benefit of deemedm service under Section 25-B of the Act. She has admitted that petitioner has been engaged in the year 2001 who had not been issued any appointment letter. she has denied that petitioner had been deliberately given breaks in the years from 2001 to 2007 but she could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty any notice was issued for unauthorized absence and the version of RW1 that she came and go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 2001 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet she cannot be deprived of her legitimate right to seek seniority as well as continuity in service form her date of joining along-with other persons working with her besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Ram Dhan who joined in February, 2003 as per Ex. RW1/D has been regularized but he was not given any fictional break in 2003 to 2004 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 2001 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** particularly when she has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of her own and did not join her duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, itis held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in crossexamination that she was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate

HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2001 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, she come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'bleSupreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous, uninterrupted service with the respondent from the date of her initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room. Announced in the open Court today this 21st day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA,
PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL,
KANGRA AT DHARAMSHALA (HP)

Ref No. : 46/2014
Date of Institution : 21.2.2014
Date of decision : 21.08.2015

Shri Mahinder Pall s/o Shri Prakam Singh, r/o Village Siharal, P.O. Tramat, Tehsil Joginder Nagar, District Mandi, H.P. *...Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H. P. *....Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether termination of services of Shri Mahinder Pall S/O Shri Prakam Singh, R/O Village Siharal, P.O. Tramat, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during year, 2001 to 2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 01.12.2001 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from October, 2001 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand,

repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 07.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years 2001 to 2007 is/was improper and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? *OPR*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. October, 2001 is not in dispute. It is the admitted case of petitioner that he had worked since October, 2001 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 2001 petitioner had worked for 35 days, 162 days in 2002, 158 days in 2003, 137 days in 2004, 162 days in 2005, 141 days in 2006, 193 days in 2007, 314 days in 2008, 361 days in 2009, 355 days in 2010, 363 days in 2011, 360 days in 2012 and 365 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2002, 2003 and 2004 except at serial nos. 3,6,7 &10 who had joined earlier to petitioner whereas petitioner had joined in 2001. Since respondent had not disputed to have engaged petitioner in October, 2001, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in crossexamination that he had agricultural land and remained employed and as such it could not be stated with certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 2001 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In crossexamination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 2001 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 6. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2001 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 2001 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted

which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serous misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 2001 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 2001 to 2007 was certainly illegal and unjustified which is manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in crossexamination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2001 to 2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional**

Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, **HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room. Announced in the open Court today this 21st day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA,
PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL,
KANGRA AT DHARAMSHALA (HP)

Ref No. : 60/2014
Date of Institution : 22.2.2014
Date of decision : 21.08.2015

Shri Vijay Kumar s/o Shri Bhonta Ram, r/o Village Math Thana, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. …*Petitioner*

Versus

The Executive Engineer, B&R Division, HPPWD Joginder Nagar, Distt. Mandi, H.P.
....*Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether time to time termination of the services of Shri Vijay Kumar, S/O Shri Bhonta Ram, R/O Village Math Thana, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. during 1999 to 2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 15.10.1998 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is

alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from October, 1998 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thusallegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 07.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years 1999 to 2007 is/was improper and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*

4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? *OPR*

5. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? *OPR*

6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion beinginterconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. 15.10.1998 is not in dispute. It is the admitted case of petitioner that he had worked since September, 1998 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 1998 petitioner had worked for 86 days, 62 days in 1999, 157 days in 2000, 167 days in 2001, 168 days in 2002, 164 days in 2003, 167 days in 2004, 163 days in 2005, 159 days in 2006, 231 days in 2007, 344 days in 2008, 350 days in 2009, 357 days in 2010, 352 days in 2011, 347 days in 2012 and 329 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1999, 2002, 2003 and 2004 except at serial no. 6 who had joined earlier to petitioner whereas petitioner had joined in 1998. Since respondent had not disputed to have engaged petitioner in October, 1998, he

ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined alongwith him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated with certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1998 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In crossexamination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 1998 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 6. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1998 who had not been issued any appointment letter but denied that petitioner had beendeliberately given breaks in the years from 1998 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serous misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 1998 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service form his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1998 to 2007 was certainly illegal and unjustified which is manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what

manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in crossexamination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1998 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

"*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room. Announced in the open Court today this 21st day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 37/2014
Date of Institution : 21.2.2014
Date of decision : 21.08.2015

Shri Tejmal s/o Shri Giga Ram, r/o Village Ras, P.O. Panjalag, Tehsil Lad Bharol, District Mandi, H.P. …*Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. ....*Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether termination of services of Shri Tejmal S/O Shri Giga Ram, R/O Village Ras, P.O. Panjalag, Tehsil Lab Bharol, District Mandi, H.P. from time to time during year 2003 to 2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 01.8.2002 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from June, 2003 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25- F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 07.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years 2003 to 2007 is/was improper and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? *OPR*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. June, 2003 is not in dispute. It is the admitted case of petitioner that he had worked since June, 2003 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent,

on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 2003 petitioner had worked for 95 days, 170 days in 2004, 170 days in 2005, 165 days in 2006, 228 days in 2007, 364 days in 2008, 358 days in 2009, 357 days in 2010, 360 days in 2011, 349 days in 2012 and 361 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1997, 1999, 2002, 2003 and 2004 except at serial nos. 1 to 3 & 6,7,9 &10 who had joined earlier to petitioner whereas petitioner had joined in 2003. Since respondent had not disputed to have engaged petitioner in June, 2003, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined alongwith him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated with certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 2003 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In crossexamination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 2001 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 6. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2003 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 2003 to 2007 but he

could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serous misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 2003 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 2003 to 2007 was certainly illegal and unjustified which is manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in crossexamination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2003 to 2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. Thematter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is

referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be incontinuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room. Announced in the open Court today this 21st day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURTCUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 67/2014
Date of Institution : 22.2.2014
Date of decision : 21.08.2015

Shri Dharam Chand s/o Shri Bansi Ram, r/o VPO Simas, Tehsil Joginder Nagar, District Mandi, H.P. *…Petitioner*

Versus

The Executive Engineer, B&R Division, HPPWD Joginder Nagar, Distt. Mandi, H. P. *....Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether time to time termination of the services of Shri Dharam Chand, S/O Shri Bansi Ram, R/O V.P.O. Simas, Tehsil Joginder Nagar, District Mandi, H.P. during March, 2000 to 2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, pastservice benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 06.3.2000 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar,

Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from September, 1998 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied.Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 07.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years March, 2000 to 2007 is/was improper and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? OPR

5. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? *OPR*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. September, 1998 is not in dispute. It is the admitted case of petitioner that he had worked since September, 1998 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 1998 petitioner had worked for 96 days, 190 days in 1999, 216 days in 2000, 174 days in 2001, 167 days in 2002, 171 days in 2003, 170 days in 2004, 170 days in 2005, 164 days in 2006, 232 days in 2007, 360 days in 2008, 363 days in 2009, 361 days in 2010, 363 days in 2011, 353 days in 2012 and 361 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1999, 2002, 2003 and 2004 except at serial no. 6 who had joined earlier to petitioner whereas petitioner had joined in 1998. Since respondent had not disputed to have engaged petitioner in September, 1998, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which

would show that other persons who had joined alongwith him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated with certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1998 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In crossexamination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 1998 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 6. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1998 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 1998 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serous misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 1998 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1998 to 2007 was certainly illegal and unjustified which is manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no

inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in crossexamination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1998 to 2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materializeand consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

"*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a*

matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. andoperative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room. Announced in the open Court today this 21st day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA,
PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL,
KANGRA AT DHARAMSHALA (HP)

Ref No. : 42/2014
Date of Institution : 21.2.2014
Date of decision : 21.08.2015

Shri Kishori Lal s/o Shri Diwan Chand, r/o Village Kathoun, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. *…Petitioner*

Versus

The Executive Engineer, B&R Division, HPPWD Joginder Nagar, Distt. Mandi, H. P. *...Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether time to time termination of the services of Shri Kishori Lal, S/O Shri Diwan Chand, R/O Village Kathoun, P.O. Panjalag, Tehsil Joginder Nagar, District Mandi, H.P. during the year 1999 to 2007 by the Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 28.10.1998 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from October, 1998 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 07.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years 1999 to 2007 is/was improper and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? *OPR*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. 28.10.1998 is not in dispute. It is the admitted case of petitioner that he had worked since September, 1998 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of

respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 1998 petitioner had worked for 70 days, 182 days in 1999, 212 days in 2000, 187 days in 2001, 173 days in 2002, 173 days in 2003, 165 days in 2004, 167 days in 2005, 154 days in 2006, 205 days in 2007, 351 days in 2008, 343 days in 2009, 351 days in 2010, 349 days in 2011, 330 days in 2012 and 361 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 1999, 2002, 2003 and 2004 except at serial no. 6 who had joined earlier to petitioner whereas petitioner had joined in 1998. Since respondent had not disputed to have engaged petitioner in October, 1998, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined alongwith him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated with certainty that petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1998 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In crossexamination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 1998 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 6. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1998 who had not been issued any appointment letter but

denied that petitioner had been deliberately given breaks in the years from 1998 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serous misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 1998 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1998 to 2007 was certainly illegal and unjustified which is manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in crossexamination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1998 to 2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not

eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room. Announced in the open Court today this 21st day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA,
PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL,
KANGRA AT DHARAMSHALA (HP)

Ref No. : 315/2014
Date of Institution : 24.10.2014
Date of decision : 21.08.2015

Shri Gian Chand s/o Shri Devi Ram, r/o Village Silah, P.O. Khazoor, Tehsil Joginder Nagar, District Mandi, H.P. …*Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. ....*Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether time to time termination of the services of Shri Gian Chand, S/O Shri Devi Ram, R/O Village Silah, P.O. Khazoor, Tehsil Joginder Nagar, District Mandi, H.P. during May, 1999 to 31-8-082007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 05.5.1999 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for brevity). This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non- joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from June, 1999 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of 'last come first go' and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria, the then Executive Engineer, HPPWD (B&R) Division, Joginder Nagar as RW1, tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 07.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years 1999 to 2007 is/was improper and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? *OPP*

3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*

4. Whether the claim petition is bad for non-joinder of necessary parties as alleged? *OPR*

5. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? *OPR*

6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. June, 1999 is not in dispute. It is the admitted case of petitioner that he had worked since September, 1998 but he had been deliberately given fictional breaks by respondent so that he could not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittentlyas he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct, it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Smt. Geeta Devi, Dalip Singh, Goutam Singh and Anil Kumar and others have been regularized by respondent who were actually not given fictional breaks at any point of time.

13. Perusal of mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 111 days, 209 days in 2000, 168 days in 2001, 163 days in 2002, 167 days in 2003, 167 days in 2004, 160 days in 2005, 161 days in 2006, 228 days in 2007, 354 days in 2008, 349 days in 2009, 344 days in 2010, 347 days in 2011, 346 days in 2012 and 349 days in 2013. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which

all the persons named above are shown to have joined in the years 1999, 2002, 2003 and 2004 except at serial no. 6 who had joined earlier to petitioner whereas petitioner had joined in 1999. Since respondent had not disputed to have engaged petitioner in June, 1999, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement but fictional breaks in no manner would affect or eclipse legitimate right of regularization in service of petitioner. However, petitioner has admitted in cross-examination that he had agricultural land and remained employed and as such it could not be stated that certainty with petitioner was not gainfully employed during the period of fictional breaks.

14. Stepping into the witness box as PW1, petitioner has sworn in detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to petitioner have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year as they had been invariably issued muster roll for whole of month in these years. In crossexamination, petitioner has admitted that he has been regularly provided with more than 240 days of work after 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. It needs to be noticed that other co-workers working with petitioner or say who were junior were given muster roll for full month so that they completed 240 days in a year. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner except serial no. 6. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter but denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not plead so as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty, any notice was issued for unauthorized absence and the version of RW1 that petitioner came and worked & go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serous misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1999 to 2007 was certainly illegal and unjustified which is manifestly in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. Issues are accordingly decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case in claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in crossexamination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1999 to 2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs.**

Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly,the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room. Announced in the open Court today this 21st day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA,
PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA
AT DHARAMSHALA (HP)

Ref No. : 300/2014
Date of Institution : 18-09-2014
Date of decision : 21.08.2015

Smt. Belu Devi w/o Shri Chuhar Singh, r/o Matkehar, P.O. Drahal, Tehsil Joginder nagar District Mandi, H.P. *…Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H. P. *....Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether time to time termination of the services of Smt. Belu Devi w/o Shri Chuhar Singh, r/o Matkehar, P.O. Drahal, Tehsil Joginder Nagar District Mandi, H.P. during 08-1998 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner had filed statement of claim before this court.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. August, 1998 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in her name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, her services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 1998 to 30.09.2007. Not only this, the persons who were working with her (petitioner) or joined the service after her were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior topetitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to her contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st

January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay andlaches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from January, 1998 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of her (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with her verbal requests from time to time, she was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per her convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Anil Sangrai the then Executive Engineer, HPPWD (NH) Division Joginder Nagar and additional charge of B&R Division as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 02.4.2015 for determination:

1. Whether time to time termination of the services of the petitioner by the respondent during the years August, 1998 to 31st August, 2007 is/was improper and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged ? *OPR*
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? *OPR*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion beinginterconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. January, 1998 is not in dispute. It is the admitted case of petitioner that petitioner had worked since January, 1998 but she had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own, used to not come on her duty besides she willfully absented several times from her duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from her duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties. Rather, it is projected to be case as if petitioner came of her own for work and left the work of her own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to her and that several persons junior to her namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1998 petitioner had worked for 57 days, 185 days in 2000, 181 days in 2001, 170 days in 2002, 179 days

in 2003, 168 days in 2004, 168 days in 2005, 170 days in 2006, 212 days in 2007, 353 days in 2008, 346 days in 2009, 348 days in 2010, 359 days in 2011, and 357 days in 2012, 358 days in 2013 and 209 days in 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years she had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 1998 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002 and 2003 except at serial nos. 1 to 3 who had joined earlier to petitioner as workmen at serial nos.4 joined in the years 1999, whereas petitioner had joined in January, 1998. Since respondent had not disputed to have engaged petitioner in January, 1998 she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined alongwith her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement and thus fictional breaks in no manner would affect or eclipse her legitimate right of regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 2000 to 2007 by giving fictional break whereas the persons junior to her have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, she has admitted that she has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 2000 to 2007 as stated in the affidavit. RW1 Shri Anil Sangrai has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. she has admitted that working of 240 days is to be established by petitioner to claim benefit of deemedm service under Section 25-B of the Act. She has admitted that petitioner has been engaged in the year 1998 who had not been issued any appointment letter. she has denied that petitioner had been deliberately given breaks in the years from 2000 to 2007 but she could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty any notice was issued for unauthorized absence and the version of RW1 that she came and go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 2000 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet she cannot be deprived of her legitimate right to seek seniority as well as continuity in service form her date of joining along-with other persons working with her besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Guddi Devi w/o Himal Chand who joined in July, 2000 as per Ex. RW1/D has been regularized but he was not given any fictional break in 2000

to 2003 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 2000 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** particularly when she has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of her own and did not join her duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, itis held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in crossexamination that she was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2000 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, she come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the

principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'bleSupreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous, uninterrupted service with the respondent from the date of her initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room. Announced in the open Court today this 21st day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA
AT DHARAMSHALA (HP)**

Ref No. : 314/2014
Date of Institution : 18.09.2014
Date of decision : 21.08.2015

Shri Ram Lal s/o Shri Amar Singh, r/o Village Nakehar, P.O. Harabag, Tehsil Joginder Nagar, District Mandi, H.P. *...Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.
....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether time to time termination of the services of Smt. Belu Devi, w/O Shri Chuhar Singh, R/O Village Matkehar, P.O. Drahal, Tehsil Joginder Nagar, District Mandi, H.P. during 08-1998 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner had filed statement of claim before this court.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. August, 1998 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in her name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 1998 to 30.09.2007. Not only this, the persons who were working with her (petitioner) or joined the service after her were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break

and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to her contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from July, 1998 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of her (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, she was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per her convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove her case, petitioner had examined himself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Anil Sangrai the then Executive

Engineer, HPPWD (NH) Division Joginder Nagar and additional charge of B&R Division as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 02.4.2015 for determination:

1. Whether time to time termination of the services of the petitioner by the respondent during the years July, 1998 to 31st August, 2007 is/was improper and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present f orm as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? *OPR*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. July, 1998 is not in dispute. It is the admitted case of petitioner that petitioner had worked since July, 1998 but she had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own, used to not come on her duty besides she willfully absented several times from her duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented

from her duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties. Rather, it is projected to be case as if petitioner came of her own for work and left the work of her own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to her and that several persons junior to her namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1998 petitioner had worked for 57 days, 185 days in the year 2000, 181 days in 2001, 170 days in 2002, 179 days in 2003, 168 days in 2004, 168 days in 2005, 170 days in 2006, 212 days in 2007, 353 days in 2008, 346 days in 2009, 348 days in 2010, 359 days in 2011, 357 days in 2012, and 358 days in 2013 and 209 days in 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years he had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 1998 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002 and 2003 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1998 whereas petitioner had joined in 1998. Since respondent had not disputed to have engaged petitioner in 1998, she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse her legitimate right of regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 2000 to 2007 by giving fictional break whereas the persons junior to her have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In crossexamination, she has admitted that she has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 2000 to 2007 as stated in the affidavit. RW1 Shri Anil Sangrai has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. She has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. She has admitted that petitioner has been engaged in the year 1998 who had not been issued any appointment letter. She has denied that petitioner had been deliberately given breaks in the years from 2000 to 2007 but she could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty any notice was issued for unauthorized absence and the version of RW1 that she came and go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for

her absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 2000 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet she cannot be deprived of her legitimate right to seek seniority as well as continuity in service form her date of joining along-with other persons working with her besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Guddi Devi w/o Himal Chand who joined in July, 2000 as per Ex. RW1/D has been regularized but she was not given any fictional break in 2000 to 2003 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 2000 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** particularly when she has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of her own and did not join her duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in crossexamination that she was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2000 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, she come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner.

Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous, uninterrupted service with the respondent from the date of her initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA
AT DHARAMSHALA (HP)

Ref No. : 281/2014
Date of Institution : 18.9.2014
Date of decision : 21.08.2015

Shri Baldev Singh s/o Shri Sali Ram, r/o Village Fegaru, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. …*Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. ....*Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether time to time termination of the services of Shri Baldev Singh, S/O Shri Sali Ram, R/O Village Fegaru, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during 04-2000 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner had filed statement of claim before this court.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. April, 2000 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in his name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 2000 to 30.09.2007. Not only this, the persons who were working with him (petitioner) or joined the service after him were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2007 and 10 years of continuous service on 31.12.2009 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from March, 2000 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted

that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in- Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Anil Sangrai the then Executive Engineer, HPPWD (NH) Division Joginder Nagar and additional charge of B&R Division as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 02.4.2015 for determination:

1. Whether time to time termination of the services of the petitioner by the respondent during the years April, 2000 to 31st August, 2007 is/was improper and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? *OPR*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issuesare as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. January, 2000 is not in dispute. It is the admitted case of petitioner that petitioner had worked since January, 2000 but hehad been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own, used to not come on his duty besides he willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own for work and left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 2000 petitioner had worked for 117 days, 156 days in the year 2001, 162 days in 2002, 178 days in 2003, 167 days in 2004, 168 days in 2005, 161 days in 2006, 220 days in 2007, 364 days in 2008, 363 days in 2009, 365 days in 2010, 365 days in 2011, 349 days in 2012, 365 days in 2013, and 179 days in 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years he had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 2000 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002 and 2003 except at serial nos. 1 to 4 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in 2000. Since respondent had not disputed to have engaged petitioner in 2000, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse his legitimate right of regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 2000 to 2007 by giving fictional break whereas the persons junior to him have been continuously engaged

by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 2000 to 2007 as stated in the affidavit. RW1 Shri Anil Sangrai has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2000 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 2000 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that he came and go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 2000 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service form his date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Guddi Devi w/o Himal Chand who joined in July, 2000 as per Ex. RW1/D has been regularized but she was not given any fictional break in 2000 to 2003 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 2000 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** particularly when he has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in crossexamination that he was working with respondent although he

earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2000 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous, uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA
AT DHARAMSHALA (HP)

Ref No. : 296/2014
Date of Institution : 18.09.2014
Date of decision : 21.08.2015

Shri Jagdish Chand s/o Shri Bhupender Singh r/o V.P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. …*Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. ....*Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether time to time termination of the services of Shri Jagdish Chand, S/O Shri Bhupender Singh, R/O V.P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during 01-1999 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner had filed statement of claim before this court.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. January, 1999 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in his name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 1999 to 30.09.2007. Not only this, the persons who were working with him (petitioner) or joined the service after him were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from January, 1999 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from

the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Anil Sangrai the then Executive Engineer, HPPWD (NH) Division Joginder Nagar and additional charge of B&R Division as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 02.4.2015 for determination:

1. Whether time to time termination of the services of the petitioner by the respondent during the years January, 1999 to 31st August, 2007 is/was improper and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? OPP
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? *OPR*

6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. January, 1999 is not in dispute. It is the admitted case of petitioner that petitioner had worked since January, 1999 but he had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own, used to not come on his duty besides he willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own for work and left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 2000 petitioner had worked for 233 days, 198 days in the year 2001, 162 days in 2002, 183 days in 2003, 167 days in 2004, 159 days in 2005, 154 days in 2006, 222 days in 2007, 363 days in 2008, 363 days in 2009, 365 days in 2010, 363 days in 2011, 351 days in 2012, 365 days in 2013, and 88 days in 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years he had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 1999 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years

2000, 2002 and 2003 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in January, 1999. Since respondent had not disputed to have engaged petitioner in January, 1999, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse his legitimate right of regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to him have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. RW1 Shri Anil Sangrai has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that he came and go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service form his date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Guddi Devi w/o Himal Chand who joined in July, 2000 as per Ex. RW1/D has been regularized but she was not given any fictional break in 2000 to 2003 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 2000 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** particularly when he has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has contended that present claim

petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in crossexamination that he was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1999 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

"*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous, uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA
AT DHARAMSHALA (HP)

Ref No. : 282/2014
Date of Institution : 18.9.2014
Date of decision : 21.08.2015

Shri Amar Singh s/o Shri Desh Raj, r/o Village Nakehar, P.O. Harabag, Tehsil Joginder Nagar, District Mandi, H.P. *...Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.
....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether time to time termination of the services of Shri Amar Singh, S/O Shri Desh Raj, R/O Village Nakehar, P.O. Harabag, Tehsil Joginder Nagar, District Mandi, H.P. during 08-2002 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner had filed statement of claim before this court.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. August, 2002 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in his name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 2002 to 30.09.2007. Not only this, the persons who were working with him (petitioner) or joined the service after him were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.7.2007 and 10 years of continuous service on 31.7.2012 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of

the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from September, 2002 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in- Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Anil Sangrai the then Executive Engineer, HPPWD (NH) Division Joginder Nagar and additional charge of B&R Division as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D yearwise working days of daily wage Beldar and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 02.4.2015 for determination:

1. Whether time to time termination of the services of the petitioner by the respondent during the years August, 2002 to 31st August, 2007 is/was improper and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? *OPR*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. January, 2002 is not in dispute. It is the admitted case of petitioner that petitioner had worked since January, 2002 but he had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own, used to not come on his duty besides he willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own for work and left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 2002 petitioner had worked for 49 days, 180 days in 2003, 161 days in 2004, 161 days in 2005, 167 days in 2006, 218 days in 2007, 366 days in 2008, 363 days in 2009, 365 days in 2010, 356 days in

2011, 354 days in 2012, 365 days in 2013, and 175 days in 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years he had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 2002 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2002 and 2003 except at serial nos. 1 to 7 & 10 who had joined earlier to petitioner as workman at serial nos.8,9 & 11 joined in the year July, 2002, April, 2003 and February, 2003 whereas petitioner had joined in January, 2002. Since respondent had not disputed to have engaged petitioner in 2002, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined alongwith him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse his legitimate right of regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 2002 to 2007 by giving fictional break whereas the persons junior to him have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 2002 to 2007 as stated in the affidavit. RW1 Shri Anil Sangrai has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed serviceunder Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2002 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 2002 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that he came and go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 2002 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service form his date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Ram Dhan who joined in February, 2003 as per Ex. RW1/D has been regularized but he was not given any fictional break in 2003 to 2004 which further establishes arbitrary manner of working of respondent in the matter of giving

fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 2002 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** particularly when he has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in crossexamination that he was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2002 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute isreferred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and**

Ors., 2005 (1) Himachal Law Journal 248, there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous, uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA
AT DHARAMSHALA (HP)

Ref No. : 389/2014
Date of Institution : 26.12.2014
Date of decision : 28.08.2015

Smt. Kaushalya Devi w/o Shri Rattan Chand, r/o Village Sanehar, P.O. Ropari, Tehsil Joginder Nagar, District Mandi, H.P. *...Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. *....Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether time to time termination of the services of Smt. Kaushalya Devi, W/O Shri Rattan Chand, R/O Village Sanehar, P.O. Ropari, Tehsil Joginder Nagar, District Mandi, H.P. during January, 2000 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner had filed statement of claim before this court.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. January, 2000 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in her name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, her services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 2000 to 30.09.2007. Not only this, the persons who were working with her (petitioner) or joined the service after her were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder

Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to her contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2007 and 10 years of continuous service on 31.12.2009 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is further asserted that petitioner does not fall in any two criteria for the implementation of the scheme framed under Mool Raj Upadhayay. It is further maintained that that no provision of the Act has been violated. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from April, 2000 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of her (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with her verbal requests from time to time, she was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per her convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with

intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria the then Executive Engineer, B&R Division HPPWD Joginder Nagar as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 02.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years January, 2000 to 31.8.2007 is/was illegal and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? *OPR*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. April, 2000 is not in dispute. It is the admitted case of petitioner that petitioner had worked since April, 2000 but she had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working

intermittently as she of her own, used to not come on her duty besides she willfully absented several times from her duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from her duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties. Rather, it is projected to be case as if petitioner came of her own for work and left the work of her own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to her and that several persons junior to her namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 2000 petitioner had worked for 162 days, 188 days in 2001, 168 days in 2002, 178 days in 2003, 171 days in 2004, 168 days in 2005, 171 days in 2006, 218 days in 2007, 360 days in 2008, 361 days in 2009, 361 days in 2010, 359 days in 2011 and 31 days in 2012. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years she had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 2001 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2002 and 2003 except at serial nos. 1 to 5 who had joined earlier to petitioner as workmen at serial nos.6 to 9 & 11 joined in the years October, 2001, December, 2001, 2002, and 2003 whereas petitioner had joined in April, 2000. Since respondent had not disputed to have engaged petitioner in April, 2000, she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement and thus fictional breaks in no manner would affect or eclipse her legitimate right of regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 2000 to 2007 by giving fictional break whereas the persons junior to her have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, she has admitted that she has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 2000 to 2007 as stated in the affidavit. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. She has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. She has admitted that petitioner has been engaged in the year 2000 who had not been issued any appointment letter. She has denied that petitioner had been deliberately given breaks in the years from 2000 to 2007 but she could not prove as no corresponding record has been produced by the respondent to establish that on absence

of petitioner from her duty any notice was issued for unauthorized absence and the version of RW1 that she came and go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 2000 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet she cannot be deprived of her legitimate right to seek seniority as well as continuity in service form her date of joining along-with other persons working with her besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Guddi Devi w/o Shri Himal Chand who joined in July, 2003 as per Ex. RW1/D has been regularized but he was not given any fictional break in 2003 to 2004 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 2000 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** particularly when she has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of her own and did not join her duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in crossexamination that she was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 2000 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, she come to know about

intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim ofpetitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous, uninterrupted service with the respondent from the date of her initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** She shall, however, be considered

for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA
AT DHARAMSHALA (HP)

Ref No. : 36/2014
Date of Institution : 13.01.2015
Date of decision : 28.08.2015

Shri Jhomphy Ram s/o Shri Munshi Ram, r/o VPO Chalharag, Tehsil Joginder Nagar, District Mandi, H.P. ...*Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. ....*Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether time to time termination of the services of Shri Jhomphy Ram, S/O Shri Munshi Ram, R/O V.P.O. Chalharag, Tehsil Joginder Nagar, District Mandi, H.P. during May, 1999 to 31-08-2007 by the Executive Engineer, B&R Division H.PP.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act,

1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner had filed statement of claim before this court.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. May, 1999 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in his name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 1999 to 30.09.2007. Not only this, the persons who were working with him (petitioner) or joined the service after him were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from July, 1999 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per

the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that petitioner does not fall in any two criteria for the implementation of the scheme framed under Mool Raj Upadhayay. It is further maintained that that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in- Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria the then Executive Engineer, B&R Division HPPWD Joginder Nagar as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 02.5.2015 for determination:

1. Whether time to time termination of the services of the petitioner by the respondent during the years May, 1999 to 31.8.2007 is/was illegal and unjustified as alleged? OPP
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? *OPR*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. July, 1999 is not in dispute. It is the admitted case of petitioner that petitioner had worked since July, 1999 but he had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own, used to not come on his duty besides he willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own for work and left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in theyear 1999 petitioner had worked for 90 days, 197 days in 2000, 184 days in the year 2001, 170 days in 2002, 181 days in 2003, 169.5 days in 2004, 171 days in 2005, 15 days in 2006, 216 days in 2007, 366 days in 2008, 365 days in 2009 and 273 days in 2010. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years he had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 1999 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002 and 2003 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in July, 1999. Since respondent had not disputed to have engaged petitioner in July, 1999, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse his legitimate right of regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1999 to

2007 by giving fictional break whereas the persons junior to him have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that he came and go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service form his date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Guddi Devi w/o Himal Chand who joined in July, 2000 as per Ex. RW1/D has been regularized but she was not given any fictional break in 2000 to 2003 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 2000 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** particularly when he has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respndoent

only PW1 has admitted in crossexamination that he was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1999 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous, uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA
AT DHARAMSHALA (HP)

Ref No. : 383/2014
Date of Institution : 16.12.2014
Date of decision : 28.08.2015

Smt. Nima Devi w/o Shri Jai Singh, r/o Village Tarapur, P.O. Tikroo, Tehsil Joginder Nagar, District Mandi, H.P. *…Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H. P. *….Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether time to time termination of the services of Smt. Nima Devi, W/O Shri Jai Singh, R/O Village Tarapur, P.O. Tikroo, Tehsil Joginder Nagar, District Mandi, H.P. during 28-08-1997 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner had filed statement of claim before this court.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. 28.8.1997 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in her name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, her services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 1998 to 30.09.2007. Not only this, the persons who were working with her (petitioner) or joined the service after her were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to her contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2005 and 10 years of continuous service on 31.12.2007 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from September, 1997 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of her (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from

the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with her verbal requests from time to time, she was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per her convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that petitioner does not fall in any two criteria for the implementation of the scheme framed under Mool Raj Upadhayay. It is further maintained that that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria the then Executive Engineer, B&R Division HPPWD Joginder Nagar as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 02.5.2015 for determination:

1. Whether time to time termination of the services of the petitioner by the respondent during the years 28.8.1997 to 31.8.2007 is/was illegal and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? *OPP*

3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*

4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? *OPR*

6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. September, 1997 is not in dispute. It is the admitted case of petitioner that petitioner had worked since September, 1997 but she had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own, used to not come on her duty besides she willfully absented several times from her duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from her duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties. Rather, it is projected to be case as if petitioner came of her own for work and left the work of her own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to her and that several persons junior to her namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1997 petitioner had worked for 74 days, 186 days in 1998, 203 days in 1999, 224 days in the year 2000, 309 days in 2001, 287 days in 2002, 269 days in 2003, 302 days in 2004, 331 days in 2005, 357 days in 2006, 361 days in 2007 and 344 days in 2008. It can be noticed that till 2000 petitioner has worked for less than 240 days whereas for other remaining years she had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 1997 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division

has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002 and 2003 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in September, 1997. Since respondent had not disputed to have engaged petitioner in September, 1997, she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with her have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement and thus fictional breaks in no manner would affect or eclipse her legitimate right of regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 1997 to 2000 by giving fictional break whereas the persons junior to her have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, she has admitted that she has been provided work more than 240 days of work after 2000 which means the dispute is only for the years 1997 to 2000 as stated in the affidavit. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1997 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 1997 to 2000 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty any notice was issued for unauthorized absence and the version of RW1 that she came and go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 1997 to 2000 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet she cannot be deprived of her legitimate right to seek seniority as well as continuity in service form her date of joining along-with other persons working with her besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Guddi Devi w/o Himal Chand who joined in July, 2000 as per Ex. RW1/D has been regularized but she was not given any fictional break in 2000 to 2003 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 1997 to 2000 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** particularly when she has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has contended that present claim

petition is not maintainable as the petitioner had abandoned the job of her own and did not join her duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in crossexamination that she was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1997 to 2000 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, she come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been caused to petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

"*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous, uninterrupted service with the respondent from the date of her initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages.** She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA
AT DHARAMSHALA (HP)

Ref No. : 26/2014
Date of Institution : 13.01.2015
Date of decision : 28.08.2015

Shri Surender Singh s/o Shri Moti Ram, r/o Village Zimzima, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. ...*Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.
....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

> "Whether time to time termination of the services of Shri Surender Singh S/O Shri Moti Ram, R/O Village Zimzima, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during November, 1999 to 31-08-2007 by the Executive Engineer, B&R Division H.PP.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner had filed statement of claim before this court.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. November, 1999 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in his name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 1999 to 30.09.2007. Not only this, the persons who were working with him (petitioner) or joined the service after him were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of

the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from October, 1999 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that petitioner does not fall in any two criteria for the implementation of the scheme framed under Mool Raj Upadhayay. It is further maintained that that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in- Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri V.S. Guleria the then Executive Engineer, B&R Division HPPWD Joginder Nagar as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 02.5.2015 for determination:

1. Whether time to time termination of the services of the petitioner by the respondent during the years November, 1999 to 31.8.2007 is/was illegal and unjustified as alleged? *OPP*
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form as alleged? *OPR*
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? *OPR*
5. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? *OPR*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes
Issue No.2 : Discussed
Issue No.3 : No
Issue No.4 : No
Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. October, 1999 is not in dispute. It is the admitted case of petitioner that petitioner had worked since October, 1999 but he had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own, used to not come on his duty besides he willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own for work and left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 30 days, 159 days in 2000, 164 days in the year 2001, 160 days in 2002, 179 days in 2003, 163 days in 2004, 163 days in 2005, 162 days in 2006, 221 days in 2007, 364 days in 2008, 363 days in 2009, 365 days in 2010, 363 days in 2011, 351 days in 2012, 365 days in

2013 and 356.5 days in 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years he had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 1999 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002 and 2003 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in July, 1999. Since respondent had not disputed to have engaged petitioner in July, 1999, he ought to have been regularized havingcontinuously worked for about 9 years with requisite number of days required for regularization and on account of fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thusfictional breaks in no manner would affect or eclipse his legitimate right of regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to him have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. RW1 Shri V.S. Guleria has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that he came and go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service form his date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Guddi Devi w/o Himal Chand who joined in July, 2000 as per Ex. RW1/D has been regularized but she was not given any fictional break in 2000 to 2003 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any

fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 2000 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** particularly when he has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO. 3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO. 4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in crossexamination that he was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

17. Ld. Dy. D.A. representing state respondent has contended that petition so filed was bad on account of delay and laches. It is evident from findings in foregoing paras that petitioner was given fictional breaks from 1999 to 31.8.2007 which was not within knowledge of petitioner. It seems that when workmen junior to petitioner had been regularized, he come to know about intermittent breaks. The matter was brought to notice of Conciliation Officer where it did not materialize and consequently Labour Commissioner made reference to this court. Ld. counsel for petitioner, on the other hand, has maintained that no prejudice had been causedto petitioner. Moreover, not a single question has been asked by ld. Dy. D.A. on delay to the petitioner. As such, delay which is not questioned stands explained as stated above. Otherwise also, plea of delay or limitation would not eclipse claim of petitioner in any manner. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case **(2007 LHLJ 903)**. In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248,** there was a delay of 12 years. **In Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled

as **Divisional Manager vs. Mohinder Kumar,** there was a delay of 14 years. **In Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

> "*The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, petitioner is held to be in continuous, uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of espondent with all consequential benefits **except back wages.** He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial,
Tribunal, Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA
AT DHARAMSHALA (HP)

Ref No. : 04/2014
Date of Institution : 04.01.2014
Date of Decision : 28.08.2015

Smt. Maheshi w/o Shri Pan Raj, r/o VPO Dharwas, Tehsil Pangi, District Chamba, H.P.
....Petitioner

Versus

The Divisional Forest Officer, Pangi Forest Division, Killar, District Chamba, H.P.
....Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether time to time termination of the services of Smt. Maheshi, W/O Shri Pan Raj, R/O V.P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. during 2000 to 2010 and finally w.e.f. November 2011 by Divisional Forest Officer, Pangi Forest Division, Killar, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. In pursuance to receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts of the case as set up in the claim petition are that petitioner had been engaged by respondent/department in the year 1995 on daily waged basis on muster roll in Killar Range of Pangi and at the time of appointment, no appointment letter or order had been given. It is claimed that petitioner had been engaged and disengaged by the department by giving fictional breaks from date of initial appointment so that she did not complete 160 days in each calendar year so as to get the benefit of the provisions of Section 25-B of the Industrial Disputes Act and this practice continued upto 2011 despite such breaks having been given by respondent, petitioner claims to have completed 160 days in the year 2001, 2002, 2003, 2008 to 2010. It is alleged that from November, 2011 the services of petitioner have been finally terminated by respondent/department whereupon petitioner raised the industrial dispute qua her illegal termination during the pendency of industrial dispute she was reengaged by the respondent since when she uninterruptedly working with the respondent. It is further alleged that petitioner was made payment either on bill voucher or on muster rolls. The grievance of petitioner further remains that persons who working along with her had been engaged continuously without any break by the

respondent and that respondent has failed to follow the principle of 'Last come First go' as envisaged under Section 25-G of the Industrial Disputes Act. It is specifically alleged that persons who have been continuously retained without being given any breaks namely S/Sh. Man Singh who was appointed in 1996, Up Sain who joined in 1996, Kewal Ram who joined in 1997, Janam Singh who joined in 1998 and Vijay Kumar who appointed in 1999 and by doing so petitioner had been discriminated and respondent is alleged to have violated the provisions of Section 25-G of the Industrial Disputes Act. The grievance of petitioner also remains that those persons junior to her have been regularized by respondent/department as per the policy of State government from time to time and on the date of institution of claim petition, above named persons were working on regular basis with the department in regular pay scale. It is also claimed that while giving fictional breaks to petitioner, no notice was issued or any inquiry was conducted and at the same time while retrenching the services of petitioner, no compensation had been paid to him and thus order of termination if null and void. It further remains the case of petitioner that she had raised industrial dispute before the Conciliation Officer/appropriate government alleging therein that services of petitioner had been arbitrarily terminated by giving fictional breaks without taking prior permission under Section 33 of Industrial Disputes Act. It is further alleged that several persons namely Dhyan Chand and Mehar Chand who had working with petitioner since 1995 have been regularized in 2007 whereas others two namely Ramesh Kumar and Man Singh were engaged by department in 1996 and 1997 have been regularized w.e.f. January, 2008. Accordingly discriminatory attitude of respondent in giving fictional breaks to the petitioner and giving regular work to other juniors was alleged to illegal. The act of engagement and disengagement intermittently is stated to be highly arbitrary, illegal and against the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act' for brevity) and the same constituted unfair labour practice as defined under Section 2 (ra) read with Vth Schedule Clause 10 of the Act. Accordingly, petitioner has prayed for setting aside the break period illegally from 1995 onwards in favour of petitioner and has also prayed for her regularization after completing eight years of service and further prayed for litigation costs of `10,000/- or to any other relief petitioner is found entitled.

4. Respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability and that petitioner was still working with the department as such claim of the petitioner finally being terminated in 2011 become in-fructuous. On merits, it is claimed that petitioner had been engaged as daily waged mazdoor in Killar Range of Pangi Forest Division since June, 2000 and not in 1995 as alleged by petitioner. It is admitted that petitioner had completed 160 days in the years 2001, 2002, 2003 and 2008 to 2010 besides maintained that work assignment pertaining forestry was of generally seasonal in nature and on completion of the seasonal work, plantation raised/plants raised in nursery as per the schedule of forestry operations and all activities are discontinued except supervision and protection which is carried out through permanent staff of the respondent/department. As such, fact of violation of Section 25-B has been emphatically denied. It has also been denied that petitioner was engaged as intermittent worker rather petitioner is alleged doing the work at her sweet will and that no fictional breaks even been given to her. It is further maintained that the services of Man Singh, Upsen, Kewal Ram, Janam Singh and Vijay Kumar have been regularized as they fulfilled the requisite criteria for regularization as per government policy. It is specifically alleged that petitioner still continued to be working with department. As such, question of final termination did not arise. Thus, denying allegation of fictional breaks from time to time as well as final termination, claim petition is sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove his case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 31.8.2012, Ex.

PW1/C copy of letter dated 20th July, 2011, Ex. PW1/D copy of Annexure-A regarding terms and conditions for regularization of daily wage/contingent paid workers, Ex. PW1/E copy of letter dated 4.9.1986 and closed evidence. On the other hand, respondent examined RW1 Shri S.P. Sharma, the then Divisional Forest Officer, Pangi tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of mandays chart of petitioner, Ex. RW1/C copy of mandays chart of other co-workers and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 17.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years 2000 2010 and final termination w.e.f. November, 2011 is/was improper and unjustified as alleged? ...OPP.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.

3. Whether the claim petition is not maintainable in the present form? ...OPR.

4. Whether the petitioner is still working with the department as such the claim petition regarding final termination w.e.f. November, 2011 has become infructuous as alleged. If so, its effect? ...OPR.

5. Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:--

Issue No.1 : No
Issue No.2 : Discussed
Issue No.3 : Yes
Issue No.4 : Yes
Relief. : Claim petition dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to mention here that the petitioner as per reply and evidence led by respondent is held to be still employed with the respondent/department and therefore the allegation of final termination did not arise. Factum of petitioner being engaged as labourer on daily wage basis on muster roll is not in dispute but their remains dispute with regard to time she was factually appointed. As mentioned in her claim petition as well as affidavit petitioner has maintained to have been employed/engaged by the respondent/department in the year 1995 hereas respondent in its reply has maintained petitioner was engaged as daily waged mazdoor at Killar range of Pangi forest in June, 2000. Thus controversy can be resolved with the aid of

mandays chart Ex. RW1/B which has been relied upon by the respondent stipulating therein that in the year 2000 petitioner was appointed and said year she had worked for 149 days. There is no evidence on record either led by petitioner or respondent which would show that petitioner was working with the respondent prior to the year 2000. The testimony of petitioner on oath that she was engaged in the year 1995 merits rejection in view of the fact that there is no corresponding records such as muster roll or entry reflected in mandays chart which would show that petitioner was engaged in 1995. At the same time plea of petitioner that her services had been finally terminated by the respondent in November/December, 2014 as alleged in her affidavit Ex. PW1/A is certainly not in consonance with her pleadings in which she alleged that she had been terminated in November, 2011 that means at the time of filing affidavit herself she was not aware if she was terminated by respondent and if she was terminated in 2011 and or in November/December, 2014.

12. The fact that petitioner maintains and reiterates her termination in the November/December, 2014 it would be relevant to mention the contents of affidavit in examination-in-chief in Ex. PW1/A is affidavit petitioner in which she has specifically alleged that while terminating the services of petitioner time to time from period 1995 to 2011 and at the time of her final termination in November/December 2014 no show cause notice had been issued or any inquiry was conducted and at the same time one month's pay in lieu of retrenchment or termination was not paid. In so far as, petitioner having worked with the respondent for more than 160 days in a year as claimed by her is concerned, it would be relevant to refer to mandays chart Ex. RW1/B which clearly reflects that in the year 2000 petitioner had worked for 149 days in the year 2000, 163 days in 2001, 170 days in 2002, 171 days in 2003, 151 days in 2004, 112 days in 2005, 120 days in 2006, 86 days in 2007, 183 days in 2008, 212 days in 2009, 176 days in 2010, 112 days in 2011, 180 days in 2012 and 115 days in 2013. It can be noticed that petitioner was working in 2013 therefore she cannot be staetd to have been finally terminated in November, 2011. The plea of respondent that forestry work was seasonal in nature has also to be rejected for the reason that the area of Killar Pangi Sub Division remains snow bound for six months and in remaining six months the work is carried out. As such, out of these six months if a workman has worked for 160 days he/she would be entitled to deemed protection envisaged under Section 25-B of the Act. It would be relevant to mention here that as per mandays chart Ex. RW1/B no work is shown to be assigned to petitioner after October or concerned years which means from December to April, no work could carry out due to bad weather conditions by respondent/department. In the absence of any government notification to the effect that forestry work was seasonal in nature it would be unsafe to hold that forestry work as assigned to petitioner was seasonal in nature and the respondent cannot be derive any benefit of this plea. As such, from the testimony of petitioner on oath coupled with mandays chart on record, it is not established that petitioner had worked for 160 days in each calendar year entitling her for regularization in service.

13. In so far as violation of the provisions of Section 25-G or Section 25-H of the Act is concerned, there is no reliable evidence on record showing that persons junior to petitioner had been not given break from time to time and therefore regularized. Reliance is placed on the seniority list Ex. RW1/C concerning Pangi Forest Division Killar which revealed that Man Singh and Up Sain were appointed in 1996 whereas Kewal Ram was appointed in 1997 and Janam Singh was appointed in 1998 whereas Vijay Kumar was appointed in 1999 which clearly shows that all the five workers reflected in the seniority list had been appointed prior 2000 and certainly prior to engagement of petitioner by respondent. Since there is no iota of evidence on record that petitioner was appointed in 1995 it is held that petitioner was appointed in June, 2000 as reflected in the mandays chart Ex. RW1/B and all the persons were shown to be seniors and regularized by respondent/department in fact appointed earlier in the year 1996, 1997, 1998 and 1999 respectively. As such, when all the five persons named above figured in seniority list have been appointed prior to petitioner, it could not be stated that persons juniors to petitioner had been engaged who were not

given fictional breaks and thus consequently regularized. Otherwise also, there is no other mandays chart that other workers who were working with the petitioner were allotted work and were issued muster roll for all 30 days.

14. In so far as the plea of abandonment by the petitioner as alleged is concerned it has been maintained by the respondent as RW1 on oath that petitioner used to come of her own and not attended the work and assumed the work as and when she liked and therefore by not joining regularly or absenting intermittently clearly indicated that she abandoned the job she was assigned but there is no merit in this plea as the respondent had not proved on record any notice was issued qua her unauthorized absence or that any departmental proceedings had been initiated against her in absence of any such corresponding evidence bald assertion of RW1 could not be relied upon so to hold that petitioner had abandoned the job. Rather absence from duty is serious misconduct requiring initiation or departmental proceedings by the respondent/department and there is no explanation from the side of respondent/department in what circumstances failed to call explanation the petitioner qua her unauthorized absence or raised any charge sheet of her willful absence from the duties. On the point of petitioner being paid by muster roll or by wage bill this shall have no serious consequence as the petitioner continued to work with the respondent/department who has failed to establish that she had completed 160 days in each calendar year and has worked for required number of years for regularization. As such, it is held that there was no fictional breaks from time to time as claimed by petitioner and that there was no final termination of petitioner by respondent in November, 2011 rather the plea of petitioner itself contradictory that her evidence on record in which she has maintained that she had been terminated in November/December, 2014 whereas the plea of respondent remains that she was still working on the date of award being announced. As such, there could no violation of Section 25-F of Act as neither any notice was required to be given nor compensation in lieu thereof as petitioner is working with respondent whose services had not been terminated. As such, when petitioner is still in employment, no findings can be given by this court qua final termination of the petitioner. It is evident from the mandays chart Ex. RW1/B that petitioner was still in employment with the respondent therefore, question of termination did not arise. Since petitioner continued to work with the respondent much after November, 2011 as she herself alleged in her affidavit that she worked also in the year 2014, therefore, there is no question of termination and therefore only inference that may be drawn that the services of the petitioner were not dispensed with by the respondent in November, 2011 rather claim of petitioner could not be stated to be maintainable as petitioner has also failed to establish that she had worked for more than 160 days required for regularization of workers in tribal area as per government policy. As such, the petitioner is held to be in the employment of respondent whose services found not been finally terminated till now. In view of foregoing discussions of issues no.1 and 2 are answered in negative in favour of respondent and against the petitioner whereas issue no.4 is answered in negative against the petitioner and in favour of respondent.

ISSUE NO. 3

15. Ld. Dy. D.A. representing respondent has contended that the claim petition is not maintainable as the reference received from the appropriate government in which reference pertains to final termination of the services of petitioner whereas petitioner herself has admitted that she was employed with the respondent/department. As such, the plea of petitioner being inconsistent is held to be not maintainable in the present form. Issue is answered in affirmative against the petitioner and in favour of respondent.

RELIEF

16. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA
AT DHARAMSHALA (HP)

Ref No. : 120/2014
Date of Institution : 04.03.2014
Date of Decision : 28.08.2015

Smt. Bhatto w/o Shri Chaman Singh, r/o VPO Dharwas, Tehsil Pangi, District Chamba, H.P. ....*Petitioner.*

Versus

The Divisional Forest Officer, Pangi Forest Division, Killar, District Chamba, H.P.
....*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether time to time termination of the services of Smt. Bhatto, W/O Shri Chaman Singh, R/O V.P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. during year 2004 to 2012 by the Divisional Forest Officer, Pangi, Forest Division at Killar, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. In pursuance to receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Averments made in the claim petition reveal that petitioner had been engaged by the respondent/department in the year 2000 in Killar Range on daily waged basis on muster roll as well as on bill voucher basis and was still working under the Forest Range Killar in Dharwas block. It is alleged that at the time of her initial appointment, no letter of appointment was given. It is alleged that respondent had engaged and disengaged petitioner and had thereby given fictional breaks so that she did not complete 160 days in each calendar year so as to deprive her of the benefit of Section 25-B of the Industrial Disputes Act. It is alleged that persons were working with the petitioner had been engaged continuously without any breaks and new persons have also been appointed by the respondent/department but they too were not given any fictional breaks by respondent. Thus, while giving fictional breaks to the petitioner from 1995 onwards principle of 'Last come First go' was not followed. Seniority of all the daily waged workmen from 2000 onwards is stated to be in the possession of respondent and therefore copy of seniority list of daily waged workers upto year 2014 has been sought. It is alleged that while giving fictional breaks whimsically neither any notice was given nor any inquiry had been conducted and the same no retrenchment compensation has been paid and therefore without complying with the said every termination was null, void and ab-initio. It is alleged that after termination of the services of the petitioner in the year 2012 she raised demand notice dated 17.12.2012 against respondent in which conciliation failed and per failure report, appropriate government has made reference to this court for adjudication. The grievance of petitioner remains that persons who were working with her had been regularized in the department which had been deprived her of legitimate right qua regularization in service with other colleagues workers. Thus, act of respondent in giving fictional breaks to petitioner from 2000 to 2012 in pick and choose method is stated to be illegal, arbitrary and against the mandatory provisions of the Industrial Disputes Act which fell in the ambit of unfair labour practice as defined in Section 2 (ra) read with Vth Schedule Clause 10 of the Industrial Disputes Act, 1947 (hereinafter called the 'the Act' for brevity). Accordingly, petitioner has prayed for setting aside the period of illegal breaks from 2000 onwards and sought direction to respondent to pay back wages for break period and also to count the breaks period in continuity in service for the purposes of regularization besides prayer has also been made to grant work charge/regular status to petitioner after completion of 8 or 10 years of service or from the date of any junior to petitioner had been regularized besides costs of litigation of `10,000/-.

4. Respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability and that petitioner was still working with the department, as such plea of the petitioner of finally being terminated in 2012 becomes redundant. On merits, admitted that petitioner had been working as daily waged mazdoor in Killar Range of Pangi Forest Division in 2002 as per mandays chart however denied that petitioner was engaged by department in the year 2000. It is alleged that forestry related works are generally seasonal and time bound in nature once a plantation was raised in nursery as per schedule of forestry operations or activities discontinued except supervision and protection which is carried out through permanent staff of respondent/department, as such, no violation of Section 25-B of the Act as alleged by the petitioner. It is stated that petitioner had been working intermittently rather petitioner is stated to be coming and attended her duties on her whims. As such, when no fictional breaks had been given and assumed the work when she liked, it could not be stated that petitioner was given fictional breaks and at the same time, principle of 'Last come First go' envisaged under Section 25-G of the Act was not followed. It is specifically stated that the petitioner was still in work in continuous so the question of termination of her service did not arise. It is also alleged that petitioner has raised demand notice on 18.4.2012 instead of 17.12.2012 and reply of same was submitted before the Labour Officer, Chamba on 18.7.2013. Thus petitioner is alleged to be working with the respondent/department even on the date of disposal of award.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 31.8.2012, Ex. PW1/C copy of letter dated 20th July, 2011, Ex. PW1/D copy of Annexure-A regarding terms and conditions for regularization of daily wage/contingent paid workers, Ex. PW1/E copy of letter dated 4.9.1986 and closed evidence. On the other hand, respondent examined RW1 Shri S.P. Sharma, the then Divisional Forest Officer, Pangi tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of mandays chart of petitioner, Ex. RW1/C copy of mandays chart of other co-workers and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 17.4.2015 for determination:

1. Whether time to time of services of the petitioner by the respondent during the years 2004 to 2012 is/was improper and unjustified as alleged? ...OPP.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.

3. Whether the claim petition is not maintainable in the present form? ...OPR.

4. Whether the petitioner is still working with the department as such the claim petition regarding final termination w.e.f. November, 2011 has become infructuous as alleged. If so, its effect? ...OPR.

5. Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:--

Issue No.1 : No
Issue No.2 : Discussed
Issue No.3 : Yes
Issue No.4 : Yes
Relief. : Claim petition dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner being in employment with respondent is not in dispute. The case of petitioner remains that she had been engaged in the year 2000 by the respondent department in Killar Forest Range Pangi on daily waged basis whereas the case of respondent remains that she was appointed in the year 2002 and not in 2000 as claimed by petitioner. The fact that petitioner had been engaged in the year 2002 corresponds with the mandays chart Ex. RW1/B relied upon by the respondent. The grievance of the petitioner remains that she had been discriminated at the time of issuance of muster roll as she was not given work for the whole month in a year whereas her

colleagues were given muster roll for the whole month who were even junior to her and had completed requisite criteria earlier to her and were therefore regularized. As such, plea of petitioner is two fold firstly that she had not been given adequate work as given to her other colleagues and the other grievance remains that even the persons who were junior to her were appointed and were not given fictional breaks which goes to show that petitioner also alleges violation of the provisions of Section 25-G as well as 25-H in giving fictional breaks to petitioner. The plea of respondent remains that no fictional break was given except that petitioner was herself irregularly attended the office who used to come and go at her own whims and fancies however petitioner has failed to bring any evidence showing that any step had been taken by it on absence of petitioner recurrently. The plea of respondent manifestly remains that she had abandoned the job in between. The controversy qua abandoning the job as well as intermittent break can be better appreciated with reference her testimony revealed facts in crossexamination.

12. PW1 Smt. Bhatto sworn in detailed affidavit Ex. PW1/A wherein she maintained that she has not been allowed to complete 160 days as required for tribal area for the purposes of regularization envisaged under Section 25-B of the Act and thus breaks as such continued to be given upto 2012 and thereafter her services had been finally terminated in 2012. Be it noticed that as per claim petition she has alleged that she had been engaged and disengaged till the year 2012. As there is no material of evidence supporting the pleadings and proof of petitioner on the point of fictional breaks had been given to her deliberately. Mandays chart Ex. RW1/B showed that in the year 2002 petitioner had worked for 24 days, no work as no muster roll was issued in the year 2003, 142 days in 2004, 91 days in 2005, 152 days in 2006, 61 days in 2007, 183 days in 2008, 105 days in 2009, 141 days in 2010, 85 days in 2011, 186 days in 2012 and 115 days in 2013. As such, in all the years aforesaid except 2008 and 2012 petitioner had worked less than 160 days. It can further be observed from this document that petitioner had been working only upto 2013 and that her affidavit it is evident that she was worked even on the date of her examination on oath before this court on 20.4.2015. In the cross-examination of respondent RW1 admitted that petitioner was still employed with the department i.e. on 13.7.2015 when examined and that no letter of appointment had been given to her. Thus, plea of final termination as set up by petitioner is not proved at all.

13. In so far there being violation of the provisions of Sections 25-G and 25-H of the Act are concerned, reliance can be placed on the seniority list Ex. RW1/C which shows that Man Singh and Up Sain two workers were appointed in 1996 and 1997 respectively whereas Kewal Ram was appointed in 1997, Janam Singh in 1998 and Vijay Kumar in 1999. Thus, seniority list clearly shows that petitioner was appointed later but the persons reflected in the seniority list had joined earlier to her and were certainly senior in service to petitioner. As such, the plea of the respondent that the juniors were appointed ignoring mandate of Section 25-G of the Act who were not given fictional break could not be legally sustained. In fact, only workers mentioned in the seniority list had been appointed by respondent earlier in time but on the point of fictional breaks also uncorroborated testimony of petitioner could not be relied in view of the fact that there is nothing in evidence to suggest that juniors continued to work for the whole month or they had been issued muster roll for more than petitioner and thus bald assertion of petitioner that breaks had been given could not be believed. In view of evidence led by petitioner it is established that no junior was appointed by the respondent/department and those figuring in the seniority list all are senior to her so the plea of time to time termination does not get established. At the same time, plea of abandonment raised by respondent also cannot be disbelieved irrespective of fact that no departmental proceedings were initiated against petitioner on her absence or any charge sheet was raised and thus plea of respondent that petitioner abandoned the job could be safely accepted and from the evidence on record, it can be concluded that petitioner has failed to establish that there was time to time termination of her services by the respondent thereby given her fictional breaks.

Accordingly, claimant/petitioner is held to have not proved time to time termination which was given by the respondent. In view of foregoing discussions, issues no.1 and 2 are answered in negative in favour of respondent and against the petitioner whereas issue no.4 is answered in favour of respondent and against the petitioner.

ISSUE NO. 3

14. This issue was not pressed by the ld. Dy. D.A. at the time of arguments which is decided unpressed however from the pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. Accordingly, it is held that claim petition is maintainable. Issue in hand is answered in negative against the respondent and in favour of petitioner.

RELIEF

15. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

16. The reference is answered in the aforesaid terms.

17. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

18. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE,
LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA
AT DHARAMSHALA (HP)

Ref No. : 215/2014
Date of Institution : 05.05.2014
Date of Decision : 28.08.2015

Smt. Jamna w/o Shri Jai Singh, r/o VPO Dharwas, Tehsil Pangi, District Chamba, H.P.
....Petitioner.

Versus

The Divisional Forest Officer, Pangi Forest Division, Killar, District Chamba, H.P.
....Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether time to time termination of the services of Smt. Jamna Devi, W/O Shri Jai Singh, R/O V.P.O. Dharwas, Tehsil Pangi, District Chamba, H.P. during October, 2000 to October, 2011 and finally during November/December, 2011 by the Divisional Forest Officer Pangi, Forest Division Killar, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. In pursuance to receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts of the case as set up in the claim petition are that petitioner had been engaged by respondent/department in the year 1995 on daily waged basis on muster roll in Killar Range of Pangi and at the time of appointment, no appointment letter or order had been given. It is claimed that petitioner had been engaged and disengaged by the department by giving fictional breaks from date of initial appointment so that she did not complete 160 days in each calendar year so as to get the benefit of the provisions of Section 25-B of the Industrial Disputes Act and this practice continued upto 2011 despite such breaks having been given by respondent, petitioner claims to have completed 160 days in each calendar year. It is alleged that from November, 2011 the services of petitioner have been finally terminated by respondent/department whereupon petitioner raised the industrial dispute qua her illegal termination during the pendency of industrial dispute she was reengaged by the respondent since when she uninterruptedly working with the respondent. It is further alleged that petitioner was made payment either on bill voucher or on muster rolls. The grievance of petitioner further remains that persons who working along with her had been engaged continuously without any break by the respondent and that respondent has failed to follow the principle of 'Last come First go' as envisaged under Section 25-G of the Industrial Disputes Act. It is specifically alleged that persons who have been continuously retained without being given any breaks namely S/Sh. Man Singh who was appointed in 1996, Up Sain who joined in 1996, Kewal Ram who joined in 1997, Janam Singh who joined in 1998 and Vijay Kumar who appointed in 1999 and by doing so petitioner had been discriminated and respondent is alleged to have violated the provisions of Section 25-G of the Industrial Disputes Act. The grievance of petitioner also remains that those persons junior to her have been regularized by respondent/department as per the policy of State government from time to time and on the date of institution of claim petition, above named persons were working on regular basis with the department in regular pay scale. It is also claimed that while giving fictional breaks to petitioner, no notice was issued or any inquiry was conducted and at the same time while retrenching the services of petitioner, no compensation had been paid to him and thus order of termination if null and void. It further remains the case of petitioner that she had raised industrial dispute before the Conciliation Officer/appropriate government alleging therein that services of petitioner had been arbitrarily terminated by giving fictional breaks without taking prior permission under Section 33 of Industrial Disputes Act. It is further alleged that several persons namely Dhyan Chand and Mehar Chand who had working with petitioner since 1995 have been regularized in 2007 whereas others two namely

Ramesh Kumar and Man Singh were engaged by department in 1996 and 1997 have been regularized w.e.f. January, 2008. Accordingly discriminatory attitude of respondent in giving fictional breaks to the petitioner and giving regular work to other juniors was alleged to illegal. The act of engagement and disengagement intermittently is stated to be highly arbitrary, illegal and against the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act' for brevity) and the same constituted unfair labour practice as defined under Section 2 (ra) read with Vth Schedule Clause 10 of the Act. Accordingly, petitioner has prayed for setting aside the break period illegally from 1995 onwards in favour of petitioner and has also prayed for her regularization after completing eight years of service and further prayed for litigation costs of ₹10,000/- or to any other relief petitioner is found entitled.

4. Respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability and that petitioner was still working with the department as such claim of the petitioner finally being terminated in 2011 become in-fructuous. On merits, it is claimed that petitioner had been engaged as daily waged mazdoor in Killar Range of Pangi Forest Division since May, 2000 and not in 1995 as alleged by petitioner. It is maintained that work assignment pertaining forestry was of generally seasonal in nature and on completion of the seasonal work, plantation raised/plants raised in nursery as per the schedule of forestry operations and all activities are discontinued except supervision and protection which is carried out through permanent staff of the respondent/department. As such, fact of violation of Section 25-B has been emphatically denied. It has also been denied that petitioner was engaged as intermittent worker rather petitioner is alleged doing the work at her sweet will and that no fictional breaks even been given to her. It is further maintained that the services of Man Singh, Upsen, Kewal Ram, Janam Singh and Vijay Kumar have been regularized as they fulfilled the requisite criteria for regularization as per government policy. It is specifically alleged that petitioner still continued to be working with department. As such, question of final termination did not arise. Thus, denying allegation of fictional breaks from time to time as well as final termination, claim petition is sought to be dismissed.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition.

6. To prove his case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 31.8.2012, Ex. PW1/C copy of letter dated 20th July, 2011, Ex. PW1/D copy of Annexure-A regarding terms and conditions for regularization of daily wage/contingent paid workers, Ex. PW1/E copy of letter dated 4.9.1986 and closed evidence. On the other hand, respondent examined RW1 Shri S.P. Sharma, the then Divisional Forest Officer, Pangi tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of mandays chart of petitioner, Ex. RW1/C copy of mandays chart of other co-workers and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 17.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years October, 2000 to October, 2011 and final termination w.e.f. November/December, 2011 is/was improper and unjustified as alleged? ...OPP.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...OPP.

3. Whether the claim petition is not maintainable in the present form? ...OPR.

4. Whether the petitioner is still working with the department as such the claim petition regarding final termination w.e.f. November, 2011 has become infructuous as alleged. If so, its effect? ...OPR.

5. Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:--

Issue No.1 : No
Issue No.2 : Discussed
Issue No.3 : Yes
Issue No.4 : Yes
Relief. : Claim petition dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO.1, 2 AND 4

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. A t the outset, it would be apt to mention here that the petitioner as per reply and evidence led by respondent is held to be still employed with the respondent/department and therefore the allegation of final termination did not arise. Factum of petitioner being engaged as labourer on daily wage basis on muster roll is not in dispute but their remains dispute with regard to time she was factually appointed. As mentioned in her claim petition as well as affidavit petitioner has maintained to have been employed/engaged by the respondent/department in the year 1995 whereas respondent in its reply has maintained petitioner was engaged as daily waged mazdoor at Killar range of Pangi forest in May, 2000. Thus controversy can be resolved with the aid of mandays chart Ex. RW1/B which has been relied upon by the respondent stipulating therein that in the year 2000 petitioner was appointed and said year she had worked for 116 days. There is no evidence on record either led by petitioner or respondent which would show that petitioner was working with the respondent prior to the year 2000. The testimony of petitioner on oath that she was engaged in the year 1995 merits rejection in view of the fact that there is no corresponding records such as muster roll or entry reflected in mandays chart which would show that petitioner was engaged in 1995. At the same time plea of petitioner that her services had been finally terminated by the respondent in November/December, 2014 as alleged in her affidavit Ex. PW1/A is certainly not in consonance with her pleadings in which she alleged that she had been terminated in November, 2011 that means at the time of filing affidavit herself she was not aware if she was terminated by respondent and if she was terminated in 2011 and or in November/December, 2014.

12. The fact that petitioner maintains and reiterates her termination in the November/December, 2014 it would be relevant to mention the contents of affidavit in examination-in-chief in Ex. PW1/A is affidavit petitioner in which she has specifically alleged that while terminating the services of petitioner time to time from period 1995 to 2011 and at the time of her final termination in November/December 2014, no show cause notice had been issued or any inquiry was conducted and at the same time one month's pay in lieu of retrenchment or termination was not paid. In so far as, petitioner having worked with the respondent for more than 160 days in a year as claimed by her is concerned, it would be relevant to refer to mandays chart Ex. RW1/B

which clearly reflects that in the year 2000 petitioner had worked for 116 days in the year 2000, 53 days in 2001, 178 days in 2002, 171 days in 2003, 161 days in 2004, 26 days in 2005, 152 days in 2006, 177 days in 2007, 153 days in 2008, 212 days in 2009, 206 days in 2010, 86 days in 2011, 180 days in 2012 and 115 days in 2013. It can be noticed that petitioner was working in 2013 therefore she cannot be stated to have been finally terminated in November, 2011. The plea of respondent that forestry work was seasonal in nature has also to be rejected for the reason that the area of Killar Pangi Sub Division remains snow bound for six months and in remaining six months the work is carried out. As such, out of these six months if a workman has worked for 160 days he/she would be entitled to deemed protection envisaged under Section 25-B of the Act. It would be relevant to mention here that as per mandays chart Ex. RW1/B, no work is shown to be assigned to petitioner after October or concerned years which means from December to April, no work could carry out due to bad weather conditions by respondent/department. In the absence of any government notification to the effect that forestry work was seasonal in nature, it would be unsafe to hold that forestry work as assigned to petitioner was seasonal in nature and the respondent cannot be derive any benefit of this plea. As such, from the testimony of petitioner on oath coupled with mandays chart on record, it is not established that petitioner had worked for 160 days in each calendar year entitling her for regularization in service.

13. In so far as violation of the provisions of Section 25-G or Section 25-H of the Act is concerned, there is no reliable evidence on record showing that persons junior to petitioner had been not given break from time to time and therefore regularized. Reliance is placed on the seniority list Ex. RW1/C concerning Pangi Forest Division Killar which revealed that Man Singh and Up Sain were appointed in 1996 whereas Kewal Ram was appointed in 1997 and Janam Singh was appointed in 1998 whereas Vijay Kumar was appointed in 1999 which clearly shows that all the five workers reflected in the seniority list had been appointed prior 2000 and certainly prior to engagement of petitioner by respondent. Since there is no iota of evidence on record that petitioner was appointed in 1995 it is held that petitioner was appointed in June, 2000 as reflected in the mandays chart Ex. RW1/B and all the persons were shown to be seniors and regularized by respondent/department in fact appointed earlier in the year 1996, 1997, 1998 and 1999 respectively. As such, when all the five persons named above figured in seniority list have been appointed prior to petitioner, it could not be stated that persons juniors to petitioner had been engaged who were not given fictional breaks and thus consequently regularized. Otherwise also, there is no other mandays chart that other workers who were working with the petitioner were allotted work and were issued muster roll for all 30 days.

14. In so far as the plea of abandonment by the petitioner as alleged is concerned, it has been maintained by the respondent as RW1 on oath that petitioner used to come of her own and not attended the work and assumed the work as and when she liked and therefore by not joining regularly or absenting intermittently clearly indicated that she abandoned the job she was assigned but there is no merit in this plea as the respondent had not proved on record any notice was issued qua her unauthorized absence or that any departmental proceedings had been initiated against her in absence of any such corresponding evidence, bald assertion of RW1 could not be relied upon so to hold that petitioner had abandoned the job. Rather absence from duty is serious misconduct requiring initiation or departmental proceedings by the respondent/department and there is no explanation from the side of respondent/department in what circumstances failed to call explanation the petitioner qua her unauthorized absence or raised any charge sheet of her willful absence from the duties. On the point of petitioner being paid by muster roll or by wage bill this shall have no serious consequence as the petitioner continued to work with the respondent/department who has failed to establish that she had completed 160 days in each calendar year and has worked for required number of years for regularization. As such, it is held that there was no fictional breaks

from time to time as claimed by petitioner and that there was no final termination of petitioner by respondent in November, 2011 rather the plea of petitioner itself contradictory that her evidence on record in which she has maintained that she had been terminated in November/December, 2014 whereas the plea of respondent remains that she was still working on the date of award being announced. As such, there could no violation of Section 25-F of Act as neither any notice was required to be given nor compensation in lieu thereof as petitioner is working with respondent whose services had not been terminated. As such, when petitioner is still in employment, no findings can be given by this court qua final termination of the petitioner. It is evident from the mandays chart Ex. RW1/B that petitioner was still in employment with the respondent therefore, question of termination did not arise. Since petitioner continued to work with the respondent much after November, 2011 as she herself alleged in her affidavit that she worked also in the year 2014, therefore, there is no question of termination and therefore only inference that may be drawn that the services of the petitioner were not dispensed with by the respondent in November, 2011 rather claim of petitioner could not be stated to be maintainable as petitioner has also failed to establish that she had worked for more than 160 days required for regularization of workers in tribal area as per government policy. As such, the petitioner is held to be in the employment of respondent whose services found not been finally terminated till now. In view of foregoing discussions of issues no.1 and 2 are answered in negative in favour of respondent and against the petitioner whereas issue no.4 is answered in negative against the petitioner and in favour of respondent.

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15. Ld. Dy. D.A. representing respondent has contended that the claim petition is not maintainable as the reference received from the appropriate government in which reference pertains to final termination of the services of petitioner whereas petitioner herself has admitted that she was employed with the respondent/department. As such, the plea of petitioner being inconsistent is held to be not maintainable in the present form. Issue is answered in affirmative against the petitioner and in favour of respondent.

RELIEF

16. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of August, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

In the Court of Dr. Jitender Kanwar, HPAS, Sub Divisional Magistrate Bharmour, District Chamba (H. P.)

Shri Deepak s/o Shri Suzada Ram, Village Khund, P.O. Pranghala, Tehsil Bharmour, District Chamba, H. P. . . *Applicant*

Versus

General Public

Proclamation under order 5, Rule 20, C.P.C., under Section 13(3) of the Births and Deaths Registration Act, 1969.

Whereas, Shri Deepak s/o Shri Suzada Ram, Village Khund, P.O. Pranghala, Tehsil Bharmour, District Chamba, H. P. has filed an application alongwith an affidavit regarding the registration of his Date of Birth, *i.e.* 06-11-1991 for entry in the record of Gram Panchayat Pranghala, Development Block Bharmour, Tehsil Bharmour, District Chamba H.P., thereof.

Hence, this proclamation is issued to the General Public, that if they have any objection/claim regarding the registration of his date of birth for entry in the concerned Gram Panchayat Pranghala *i.e.* 06-11-1991 they may file their claim/objections on or before 10-12-2015 in this court failing which necessary orders will be passed to the concerned Gram Panchayat for registration of date of Birth accordingly.

Given today under my signature and seal of the Court.

Seal.

Dr. JITENDER KANWAR, HPAS,
Sub Divisional Magistrate,
Bharmour, District Chamba (H.P.).

In the Court of Dr. Jitender Kanwar, HPAS, Sub Divisional Magistrate Bharmour, District Chamba (H. P.)

Shri Shyam Lal s/o Shri Roshan Lal, VPO Lamu, Tehsil Bharmour, District Chamba, H. P. . . *Applicant*

Versus

General Public

Proclamation under order 5, Rule 20, C.P.C., under Section 13(3) of the Births and Deaths Registration Act, 1969.

Whereas, Shri Shyam Lal s/o Shri Roshan Lal, VPO Lamu, Tehsil Bharmour, District Chamba, H. P. has filed an application alongwith an affidavit regarding the registration of the date of Birth of his son Abhay Kumar *i.e.* 15-07-2007 for entry in the record of Gram Panchayat Lamu, Development Block Bharmour, Tehsil Bharmour, District Chamba H.P., thereof.

Hence, this proclamation is issued to the General Public, that if they have any objection/claim regarding the registration of his date of birth for entry in the concerned Gram

Panchayat Lamu *i.e.* 15-07-2007 they may file their claim/objections on or before 12-12-2015 in this court failing which necessary orders will be passed to the concerned Gram Panchayat for registration of date of Birth accordingly.

Given today under my signature and seal of the Court.

Seal.

Dr. JITENDER KANWAR, HPAS,
Sub Divisional Magistrate,
Bharmour, District Chamba (H.P.).

ब अदालत कार्यकारी दण्डाधिकारी, भलेई, जिला चम्बा, हि0 प्र0

श्री तिलक राज पुत्र श्री सालो राम, निवासी गांव भलारा, ग्राम पंचायत भुनाड, परगना व उप–तहसील भलेई, जिला चम्बा, हि0 प्र0 .. सायल

बनाम

1. आम जनता व रिश्तेदार .. फ्रीक दोयम

विषय : प्रार्थना पत्र जेर धारा 13(3) जन्म एवम् मृत्यु अधिनियम, 1969 के अन्तर्गत ग्राम पंचायत भुनाड में जन्म पंजीकरण रजिस्टर करने बारे।

उपरोक्त उनवान मुकद्दमा में श्री तिलक राज पुत्र श्री सालो राम, निवासी गांव भलारा, ग्राम पंचायत भुनाड, परगना व उप–तहसील भलेई, जिला चम्बा, हि0 प्र0 ने ग्राम पंचायत भुनाड में अपना जन्म पंजीकरण रजिस्टर में दर्ज करने बारे एक प्रार्थना पत्र इस कार्यालय में गुजारा है तथा ग्राम पंचायत भुनाड को आदेश जारी करने की गुजारिश की है। सायल ने प्रार्थना पत्र के साथ ब्यान हल्फी, प्रपत्र 10 अप्राप्यता प्रमाण पत्र, फार्म–1 जन्म सूचना पत्र, शैक्षणिक प्रमाण पत्र व रजिस्टर जन्म एवम् मृत्यु (सी0एम0ओ0) चम्बा का अनुमति पत्र संलग्न किये हैं।

अतः सर्वसाधारण को इस इश्तहार के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को तिलक राज पुत्र श्री सालो राम, निवासी गांव भलारा, ग्राम पंचायत भुनाड, परगना व उप तहसील भलेई, जिला चम्बा (हि0 प्र0) की जन्म तिथि 26–04–1991 व नाम को ग्राम पंचायत भुनाड के अभिलेख में दर्ज करने बारे कोई उजर व एतराज हो तो दिनांक 17–12–2015 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर आकर अपना उजर व एतराज लिखित रुप में पेश करे अन्यथा अदम पैरवी एक तरफा कार्यवाही अमल में लाई जायेगी। इसके उपरान्त कोई भी उजर व एतराज काबले समायत न होगा।

आज दिनांक 12–11–2015 को मेरे हस्ताक्षर व मोहर द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
भलेई, जिला चम्बा (हि0 प्र0)।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार, भलेई, जिला चम्बा, हि0 प्र0

श्री रोशन लाल पुत्र चनालू, निवासी गांव व महाल चमोह, परगना व उप–तहसील भलेई, जिला चम्बा, हि0 प्र0 .. सायल

बनाम

आम जनता व रिश्तेदार .. फ्रीक दोयम

विषय : प्रार्थना पत्र बाबत नाम दरुस्ती बारे।

उपरोक्त उनवान मुकद्दमा में श्री रोशन लाल पुत्र चनालू, निवासी गांव व महाल चमोह, परगना व उप–तहसील भलेई, जिला चम्बा, हि0 प्र0 ने अदालत हजा में एक प्रार्थना पत्र गुजारा है कि उसका नाम महाल चमोह व बग्गी के राजस्व अभिलेख में रोशन पुत्र चनालू दर्ज है, जो कि गलत है जबकि उसका नाम ग्राम पंचायत कंगेड के अीिलेख में रोशन लाल पुत्र चनालू सही व दरुस्त दर्ज है। इसलिये वह अपना नाम राजस्व अभिलेख में रोशन उर्फ रोशन लाल पुत्र चनालू करवाना चाहता है।

अतः आम जनता व रिश्तेदारों को इस इश्तहार के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त नाम दरुस्ती बारे कोई उजर व एतराज हो तो वह दिनांक 17–12–2015 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर आकर अपना उजर व एतराज लिखित रुप में पेश करे अन्यथा अदम पैरवी एक तरफा कार्यवाही अमल में लाई जायेगी। इसके उपरान्त कोई भी उजर व एतराज काबले समायत न होगा।

आज दिनांक 16–11–2015 को मेरे हस्ताक्षर व मोहर द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार,
भलेई, जिला चम्बा (हि0 प्र0)।

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ब अदालत सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार, भलेई, जिला चम्बा, हि0 प्र0

श्री चतर सिंह पुत्र ज्ञानो, निवासी गांव व महाल परछी, परगना व उप–तहसील भलेई, जिला चम्बा, हि0 प्र0 .. सायल

बनाम

आम जनता व रिश्तेदार .. फ्रीक दोयम

विषय : प्रार्थना पत्र बाबत नाम दरुस्ती बारे।

उपरोक्त उनवान मुकद्दमा में श्री चतर सिंह पुत्र ज्ञानो, निवासी गांव व महाल परछी, परगना व उप–तहसील भलेई, जिला चम्बा, हि0 प्र0 ने अदालत हजा में एक प्रार्थना पत्र गुजारा है कि उसका नाम पटवार वृत्त सिमणी के महाल परछी के राजस्व अभिलेख में चतरो पुत्र ज्ञानो दर्ज है, जो कि गलत है जबकि उसका नाम ग्राम पंचायत कंगेड व सर्विस पैंशन बुक में चतर सिंह पुत्र ज्ञानो सही व दरुस्त दर्ज है। इसलिये वह अपना नाम राजस्व अभिलेख में चतरो उर्फ चतर सिंह पुत्र ज्ञानो करवाना चाहता है।

अतः आम जनता व रिश्तेदारों को इस इश्तहार के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त नाम दरुस्ती बारे कोई उजर व एतराज हो तो वह दिनांक 17–12–2015 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर आकर अपना उजर व एतराज लिखित रुप में पेश करे अन्यथा अदम पैरवी एक तरफा कार्यवाही अमल में लाई जायेगी। इसके उपरान्त कोई भी उजर व एतराज काबले समायत न होगा।

आज दिनांक 16–11–2015 को मेरे हस्ताक्षर व मोहर द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार,
भलेई, जिला चम्बा (हि0 प्र0)।

ब अदालत सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार, भलेई, जिला चम्बा, हि0 प्र0

श्री राजमल पुत्र माधो, निवासी गांव व महाल ब्रंगाल, परगना व उप–तहसील भलेई, जिला चम्बा, हि0 प्र0 .. सायल

बनाम

आम जनता व रिश्तेदार .. फ्रीक दोयम

विषय : प्रार्थना पत्र बाबत नाम दरुस्ती बारे।

उपरोक्त उनवान मुकद्दमा में श्री राजमल पुत्र माधो, निवासी गांव व महाल ब्रंगाल, परगना व उप–तहसील भलेई, जिला चम्बा, हि0 प्र0 ने अदालत हजा में एक प्रार्थना पत्र गुजारा है कि उसका नाम पटवार वृत्त भलेई के महाल ब्रंगाल के राजस्व अभिलेख में राजो पुत्र माधो दर्ज है, जो कि गलत है जबकि उसका नाम ग्राम पंचायत ब्रंगाल के राजस्व अभिलेख में राजमल पुत्र माधो सही व दरुस्त दर्ज है। इसलिये वह अपना नाम राजस्व अभिलेख में राजो उर्फ राजमल पुत्र माधो करवाना चाहता है।

अतः आम जनता व रिश्तेदारों को इस इश्तहार के माध्यम से सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त नाम दरुस्ती बारे कोई उजर व एतराज हो तो वह दिनांक 17–12–2015 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर आकर अपना उजर व एतराज लिखित रुप में पेश करे अन्यथा अदम पैरवी एक तरफा कार्यवाही अमल में लाई जायेगी। इसके उपरान्त कोई भी उजर व एतराज काबले समायत न होगा।

आज दिनांक 16–11–2015 को मेरे हस्ताक्षर व मोहर द्वारा जारी किया गया।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी एवं नायब तहसीलदार,
भलेई, जिला चम्बा (हि0 प्र0)।

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In the Court of Shri Gian Sagar Negi, Sub-Divisional Magistrate, Shimla (R), District Shimla (H. P.)

Smt. Kalawati w/o Shri Purshotam Lal, r/o Village Lunsu, P. O. Khaira, Tehsil Suni, District Shimla, Himachal Pradesh.

Versus

General Public .. *Respondent.*

Whereas Smt. Kalawati w/o Shri Purshotam Lal, r/o Village Lunsu, P. O. Khaira, Tehsil Suni, District Shimla, Himachal Pradesh has filed an application along with affidavit in the court of undersigned under section 13(3) of the Births & Deaths Registration Act, 1969 to enter the name and date of birth of her son named—Mr. Mohinder Kumar s/o Smt. Kalawati w/o Shri Purshotam Lal, r/o Village Lunsu, P. O. Khaira, Tehsil Suni, District Shimla, Himachal Pradesh in the record of Secy., Birth and Death, Gram Panchayat Chebri, Shimla.

Sl. No.	Name of the family members	Relation	Date of Birth
1.	Mr. Mohinder Kumar	Son	30-11-1990

Hence, this proclamation is issued to the general public if they have any objection/claim regarding entry of the name & date of birth of above named in the record of Gram Panchayat Chebri may file their claims/objections on or before one month of publication of this notice in Govt. Gazette in this court, failing which necessary orders will be passed.

Issued today 27-11-2015 under my signature and seal of the court.

Seal. Sd/-

Sub-Divisional Magistrate,
Shimla (R), District Shimla.

ब अदालत नायब तहसीलदार एवं कार्यकारी दण्डाधिकार, तहसील चड़गांव, जिला शिमला, हिमाचल प्रदेश

श्री सुभाष चन्द बनाम आम जनता

दरख्वास्त जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

हरगाह श्री सुभाष चन्द पुत्र श्री धनी राम, निवासी कोयला, तहसील चडगांव, जिला शिमला, हिमाचल प्रदेश ने दरख्वास्त गुजारी है कि प्रार्थी अधिकतर बाहर अपने निजी कारोबार में रहता है घर पर प्रार्थी की धर्म पत्नी रहती है जो अज्ञानता के कारण अपने पुत्र सन्दीप कुमार की जन्म तिथि कार्यालय ग्राम पंचायत रनोल के परिवार रजिस्टर में दर्ज नहीं करवा सकी। प्रार्थी के पुत्र सन्दीप कुमार की जन्म तिथि 30–4–1995 है।

अतः सर्वसाधारण को इस इश्तहार द्वारा सूचित किया जाता है कि इस बारे यदि किसी व्यक्ति या रिश्तेदार को कोई उजर व एतराज हो तो वह अपना एतराज दिनांक 23–12–15 को प्रातः 10 बजे अदालत में हाजिर आकर पेश कर सकता है अन्यथा एक तरफा कार्यवाही अमल में लाई जाकर उपरोक्त नाम की जन्म तिथि का इन्द्राज ग्राम पंचायत रनोल के रिकार्ड में दर्ज करने के आदेश पारित कर दिये जायेंगे।

आज दिनांक 26–11–15 को मेरे हस्ताक्षर व मोहर अदालत सहित जारी किया गया।

मोहर। हस्ताक्षरित / –

नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
चड़गांव, जिला शिमला (हि0 प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

श्री नजमूदीन पुत्र श्री अब्दुल समद, निवासी ग्राम फतेहपुर, तहसील पांवटा साहिब, जिला सिरमौर .. वादी

बनाम

आम जनता .. प्रतिवादी

प्रकरण संख्या : 170 / 15

उनवान मुकद्दमा : प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री नजमूदीन पुत्र श्री अब्दुल समद, निवासी ग्राम फतेहपुर, तहसील पांवटा साहिब, जिला सिरमौर ने एक प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि आवेदक किन्हीं कारणों से अपनी स्वयं की जन्म तिथि 30–11–1955 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाया है। इस बारे आवेदक द्वारा एक ब्यान हल्फी भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ पत्र भी आवेदक ने अपने प्रार्थना–पत्र के साथ संलग्न किये हैं। आवेदक ने ग्राम पंचायत माजरा में अपनी ऊपर वर्णित जन्म तिथि 30–11–1955 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को नजमूदीन की जन्म तिथि ग्राम पंचायत माजरा, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिति 20–12–2015 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त श्री नजमूदीन की जन्म तिथि को ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 20–11–2015 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

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ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

श्री पंचम सिंह पुत्री श्री दीवान सिंह, निवासी जोलियोवाला, तहसील देहरादून, U. K. .. वादी

बनाम

आम जनता .. प्रतिवादी

प्रकरण संख्या : 168 / 15

उनवान मुकद्दमा : प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री पंचम सिंह पुत्री श्री दीवान सिंह, निवासी जोलियोवाला, तहसील देहरादून, U. K.ने एक प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि आवेदक किन्हीं कारणों से अपने पुत्र विरेन्द्र कैंथला की मृत्यु तिथि 09–11–2013 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित नगरपालिका परिषद् में दर्ज नहीं करवा पाया है। इस बारे आवेदक द्वारा एक ब्यान हल्फी भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ पत्र भी आवेदक ने अपने प्रार्थना–पत्र के साथ संलग्न किये हैं। आवेदक ने नगरपालिका परिषद् पांवटा साहिब में अपने ऊपर वर्णित पुत्र की मृत्यु तिथि 09–11–2013 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को विरेन्द्र कैंथला की मृत्यु तिथि नगरपालिका परिषद् पांवटा साहिब, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिति 14–12–2015 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त विरेन्द्र कैंथला की मृत्यु तिथि को सम्बन्धित नगरपालिका परिषद् में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार मृत्यु तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 12–11–2015 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

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ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

श्री जीवन सिंह पुत्र श्री अर्जुन सिंह, निवासी ग्राम बेहडेवाला, तहसील पांवटा साहिब, जिला सिरमौर .. वादी

बनाम

आम जनता .. प्रतिवादी

प्रकरण संख्या : 169 / 15

उनवान मुकद्दमा : प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री जीवन सिंह पुत्र श्री अर्जुन सिंह, निवासी ग्राम बेहडेवाला, तहसील पांवटा साहिब, जिला सिरमौर ने एक प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि आवेदक किन्हीं कारणों से अपनी पुत्री गुरदीप कौर की जन्म तिथि 21–3–1983 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाया है। इस बारे आवेदक द्वारा एक ब्यान हल्फी भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ पत्र भी आवेदक ने अपने प्रार्थना–पत्र के साथ संलग्न किये हैं। आवेदक ने ग्राम पंचायत अमरकोट में अपनी ऊपर वर्णित पुत्री की जन्म तिथि 21–3–1983 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को कु0 गुरदीप कौर की जन्म तिथि ग्राम पंचायत अमरकोट, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिति 13–12–2015 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त कु0 गुदीप कौर की जन्म तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 12–11–2015 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

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ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

श्रीमती नीरू देवी पत्नी श्री मंगल सिंह, निवासी ग्राम छावनीवाला, तहसील पांवटा साहिब, जिला सिरमौर .. वादिया

बनाम

आम जनता .. प्रतिवादी

प्रकरण संख्या : 164 / 15

उनवान मुकद्दमा : प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्रीमती नीरू देवी पत्नी श्री मंगल सिंह, निवासी ग्राम छावनीवाला, तहसील पांवटा साहिब, जिला सिरमौर ने एक प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि आवेदिका किन्हीं कारणों से अपने पुत्र अमन व पुत्री काजल की जन्म तिथि क्रमशः 8–11–2003 व 6–12–2004 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाई है। इस बारे आवेदिका द्वारा एक ब्यान हल्फी भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ पत्र भी आवेदिका ने अपने प्रार्थना–पत्र के साथ संलग्न किये हैं। आवेदिका ने ग्राम पंचायत शिवपुर में अपने ऊपर वर्णित पुत्र / पुत्री की जन्म तिथियों को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को अमन व काजल की जन्म तिथियां ग्राम पंचायत शिवपुर, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिति 10–12–2015 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त अमन व काजल की जन्म तिथियों को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथियों का पंजीकरण करने के आदेश जारी कर दिये जायेंगे।

आज दिनांक 10–11–2015 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

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ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

श्री राजेन्द्र कुमार सैनी पुत्र श्री कर्मचंद सैनी, निवासी ग्राम किशनपुरा, तहसील पांवटा साहिब, जिला सिरमौर .. वादी

बनाम

आम जनता .. प्रतिवादी

प्रकरण संख्या : 165 / 15

उनवान मुकद्दमा : प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री राजेन्द्र कुमार सैनी पुत्र श्री कर्मचंद सैनी, निवासी ग्राम किशनपुरा, तहसील पांवटा साहिब, जिला सिरमौर ने एक प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि आवेदक किन्हीं कारणों से अपने पुत्र साहिल कुमार सैनी की जन्म तिथि 8–3–1992 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाया है। इस बारे आवेदक द्वारा एक ब्यान हल्फी भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ पत्र भी आवेदक ने अपने प्रार्थना–पत्र के साथ संलग्न किये हैं। आवेदक ने ग्राम पंचायत नवादा में अपने ऊपर वर्णित पुत्र की जन्म तिथि 8–3–1992 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को साहिल कुमार सैनी की जन्म तिथि ग्राम पंचायत नवादा, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिति 10–12–2015 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त साहिल कुमार सैनी की जन्म तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 10–11–2015 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

श्री देविन्द्र सिंह पुत्र श्री जगदीश चंद, निवासी ग्राम कोलर, तहसील पांवटा साहिब, जिला सिरमौर .. वादी

बनाम

आम जनता .. प्रतिवादी

प्रकरण संख्या : 166 / 15

उनवान मुकद्दमा : प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री देविन्द्र सिंह पुत्र श्री जगदीश चंद, निवासी ग्राम कोलर, तहसील पांवटा साहिब, जिला सिरमौर ने एक प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि आवेदक किन्हीं कारणों से अपनी स्वयं की जन्म तिथि 24–04–1994 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाया है। इस बारे आवेदक द्वारा एक ब्यान हल्फी भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ पत्र भी आवेदक ने अपने प्रार्थना–पत्र के साथ संलग्न किये हैं। आवेदक ने ग्राम पंचायत कोलर में अपनी ऊपर वर्णित जन्म तिथि 24–04–1994 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को देविन्द्र सिंह की जन्म तिथि ग्राम पंचायत कोलर, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिति 10–12–2015 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त श्री देविन्द्र सिंह की जन्म तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 10–11–2015 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

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ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

श्रीमती Tsering Bhuti d/o Shri Kunsang निवासी Tibetan Society Bhuppur, तहसील पांवटा साहिब, जिला सिरमौर .. वादिया

बनाम

आम जनता .. प्रतिवादी

प्रकरण संख्या : 167 / 15

उनवान मुकद्दमा : प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्रीमती Tsering Bhuti d/o Shri Kunsang, w/o Pema Dorjee निवासी Tibetan Society Bhuppur, तहसील पांवटा साहिब, जिला सिरमौर ने एक प्रार्थना पत्र प्रस्तुत करके निवेदन किया है कि आवेदिका किन्हीं कारणों से अपनी स्वयं की जन्म तिथि 18–3–1977 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाई है। इस बारे आवेदिका द्वारा एक ब्यान हल्फी भी पेश किया गया है तथा इस

सम्बन्ध में दो गवाहों के शपथ पत्र भी आवेदिका ने अपने प्रार्थना–पत्र के साथ संलग्न किये हैं। आवेदिका ने ग्राम पंचायत भाटांवाली में अपनी ऊपर वर्णित जन्म तिथि 18–3–1977 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को Smt. Tsering Bhuti की जन्म तिथि ग्राम पंचायत भाटांवाली, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिति 10–12–2015 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त Smt. Tsering Bhuti की जन्म तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 10–11–2015 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

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ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

मो0 कामिल पुत्र श्री अब्दुल सत्तार, निवासी ग्राम भुपपूर, तहसील पांवटा साहिब, जिला सिरमौर .. वादी

बनाम

आम जनता .. प्रतिवादी

प्रकरण संख्या : 160 / 15

उनवान मुकद्दमा : प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

मो0 कामिल पुत्र श्री अब्दुल सत्तार, निवासी ग्राम भुपपूर, तहसील पांवटा साहिब, जिला सिरमौर ने एक प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि आवेदक किन्हीं कारणों से अपने पुत्र मोहम्मद आमिर की जन्म तिथि 14–2–1993 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाया है। इस बारे आवेदक द्वारा एक ब्यान हल्फी भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ पत्र भी आवेदक ने अपने प्रार्थना–पत्र के साथ संलग्न किये हैं। आवेदक ने ग्राम पंचायत भाटांवाली में अपने ऊपर वर्णित पुत्र की जन्म तिथि 14–2–1993 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को मोहम्मद आमिर की जन्म तिथि ग्राम पंचायत भाटांवाली, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिति 10–12–2015 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त मोहम्मद आमिर की जन्म तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 10–11–2015 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

ब अदालत कार्यकारी दण्डाधिकारी, पांवटा साहिब, जिला सिरमौर, हिमाचल प्रदेश

श्री गुरविन्द्र सिंह सैनी पुत्र श्री परमजीत सिंह सैनी, निवासी ग्राम शुभखेड़ा, तहसील पांवटा साहिब, जिला सिरमौर .. वादी

बनाम

आम जनता .. प्रतिवादी

प्रकरण संख्या : 163 / 15

उनवान मुकद्दमा : प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री गुरविन्द्र सिंह सैनी पुत्र श्री परमजीत सिंह सैनी, निवासी ग्राम शुभखेड़ा, तहसील पांवटा साहिब, जिला सिरमौर ने एक प्रार्थना–पत्र प्रस्तुत करके निवेदन किया है कि आवेदक किन्हीं कारणों से अपनी स्वयं की जन्म तिथि 30–12–1988 का इन्द्राज निर्धारित अवधि के अन्दर सम्बन्धित ग्राम पंचायत में दर्ज नहीं करवा पाया है। इस बारे आवेदक द्वारा एक ब्यान हल्फी भी पेश किया गया है तथा इस सम्बन्ध में दो गवाहों के शपथ पत्र भी आवेदक ने अपने प्रार्थना–पत्र के साथ संलग्न किये हैं। आवेदक ने ग्राम पंचायत बद्रीपुर में अपनी ऊपर वर्णित जन्म तिथि 30–12–1988 को दर्ज करने का अनुरोध किया है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी भी व्यक्ति को गुरविन्द्र सिंह सैनी की जन्म तिथि ग्राम पंचायत बद्रीपुर, तहसील पांवटा साहिब में दर्ज करने बारे कोई एतराज हो तो वह मिति 10–12–2015 को या इससे पूर्व हमारे न्यायालय में हाजिर होकर लिखित अथवा मौखिक एतराज पेश कर सकता है। उक्त निश्चित तिथि के बाद कोई भी एतराज मान्य नहीं होगा और समझा जायेगा कि उक्त गुरविन्द्र सिंह सैनी की जन्म तिथि को सम्बन्धित ग्राम पंचायत में दर्ज करने बारे किसी को कोई एतराज नहीं है तथा नियमानुसार जन्म तिथि पंजीकरण के आदेश जारी कर दिये जायेंगे।

आज दिनांक 10–11–2015 को हमारे हस्ताक्षर व मोहर से जारी हुआ।

मोहर।

हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
पांवटा साहिब, जिला सिरमौर (हि0 प्र0)।

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है